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REVIVIFICATION OF LABOUR STRIKE UTILITY:

A STUDY OF THE INCIDENCE, DECLINING
EFFECTIVENESS, AND ALTERNATIVES TO
STRIKE ACTION

by



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A THESIS

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ABSTRACT

This thesis centers on the strike-threat system and its efficacy in maintaining industrial peace in Alberta. The topic is felt to be timely in light of the rising controversy over the right to strike, and the increasing numbers of management, government, and even labour officials who are questioning the effectiveness and rationality of the strike weapon as the basis of our industrial relations system in today's inter-dependent society.

That the strike is less effective in ensuring peaceful settlements than in former times is evidenced by the generally rising incidence and the increasing average duration of work stoppages. A study of the labour strike is undertaken here to identify those factors which are contributing to its declining utility. The first goal is to establish the role of the strike in the negotiation process. That role is to ensure that the cost of disagreement exceeds that of agreement, thereby coercing compromise offers and demands eventually leading to peaceful settlements. The factors found to be contributing to the growing inability of the strike system to effectively accomplish its role are what are termed here "insulating tactics" - activities undertaken by the parties (labour and management) through which they seek to avoid the economic impact of engaging in this "economic warfare".

The primary purpose of this thesis is to seek out a solution to the present problems of labour strife. After reviewing alternatives to the strike offered to date it is concluded that, at least for the time

being, the adversarial strike system is here to stay. Within this constraint a proposal for revivification of labour strike effectiveness is developed. It is based on two models conceptualized by Professor S.M.A. Hameed; each model represents the basis for one of the two stages in the proposal. The first stage is a monetary penalty scheme aimed at offsetting the parties' insulating tactics. The second stage is a cost-benefit analysis scheme offering more objective criteria for government intervention in particularly disruptive disputes.

Further government involvement in labour relations in Alberta is a necessary evil. If disruptions due to work stoppages are not minimized now public overreaction, and consequent legislation thereof, may destroy free collective bargaining. The revivification proposal put forth in this thesis is aimed at using limited government intervention now in the hope of avoiding overreaction and preserving collective bargaining through minimizing strike activity.

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One of the eternal conflicts out of which
life is made up is that between the effort
of every man to get the most he can
for his services and that of society,
disguised under the name of
capital, to get his services
for the least possible return.

Oliver Wendell Holmes, 1896.

CHAPTER I

INTRODUCTION

NATURE AND PURPOSE OF THE STUDY

On December 31, 1968 Dean H.D. Woods, in his office as Chairman of the federally appointed Task Force on Labour Relations, submitted the Task Force's report entitled "Canadian Industrial Relations". The report was commissioned to assist the government in labour policy decisions and legislative review. The introduction of that report is headed "Industrial Relations Under Attack" and begins:

- "1. Periodically the conduct of labour-management relations in any country is subject to severe criticism. In Canada, as well as in many other western countries, the attack on collective bargaining has been mounting in recent years. The result verges on a crisis of confidence in the present industrial relations system.
2. Why has the public apparently lost faith in the prevailing collective bargaining process? The rash of strikes which have caught the headlines in recent years provides much of the explanation. In many of these disputes the protagonists seem to suffer less than the public. Worse still, there is apprehension that the parties are using the public as their whipping boy while they work out their differences."

This report came two years after the ill-famed "Pearson settlement" with the St. Lawrence dockworkers. That agreement provided for an unprecedented thirty percent wage increase over two years, and is blamed by many for the flurry of "catch-up" demands which predominated negotiations in the first half of the 1970's. Predictably, especially in light of the rampant inflation experienced in that period, the catch-up "doctrine" precipitated a flood of strikes. When Woods spoke of the public outcry

over labour unrest in the 1968 Task Force report there had been 582 strikes for the year, involving some 223,562 workers and costing 5,082,732 man-days lost. Although the incidence of strike activity has peaked and troughed since 1968, at the time of this writing the 1976 figures show an approximate 77% increase (over 1968) in the number of strikes (1,030) and an approximate 109% increase in man-days lost (10,624,130).² Public antipathy towards the strike weapon has increased likewise; the resounding hue and cry now chorused is that "there's got to be a better way".

Public animosity towards strike activity necessarily flows to our entire collective bargaining system. In response to this "attack", industrial relations practitioners and academics have proposed and supported various schemes to overhaul the system. Propositions have ranged from compulsory arbitration,³ through the non-stoppage strike,⁴ to a complete revamping by institution of "Mitbestimmung" (co-determination), as, for example, is outlined in the controversial "Connaghan Report"⁵. New gimmicks or modifications and variations of old innovations appear with each new issue of the various labour periodicals. The process has been going on for decades, yet little has changed. In the end we still have the union and the strike taking the blunt of an ever increasing animosity towards work disruptions. In 1956 41% of Canadian households polled frowned on the conflict aspects of unions and considered their leaders "troublemakers and agitators". In 1966 50% of those questioned held these feelings, and by 1976 67% of the public had such an opinion (71% in non-union households and 60% in union households).⁶

The Tautological Nature Of The Problem

Union insistence on the bilateral wage decision process (backed by the threat and utilization of the strike) is frequently cited as the

root of current inflation ills. Ironically, it is the spiralling consumer price index which is the force of the argument behind the catch-up demands that initiated these turbulent bargaining years. If economists are split on the impact of collective bargaining and the strike-threat on the economy, the public is not. The tautology is set: bargaining power, fortified by the strike weapon, is blamed for inflation; and inflation is blamed for much of the strike activity.⁸ It is this vicious circle which evokes the popular "logical" solution to some who seek labour peace - remove the strike from our industrial relations framework. Simple, yet impractical. As Professor Crispo has stated:

"The strike is an indispensable part of our collective bargaining system. It is the threat of a strike or lock-out - or the strike or lock-out that enables it to function."

The point is that the strike simply cannot be removed unless and until there is a viable alternative with which to replace it. Clearly labour is as anxious to settle its demands without the strike as any sector of our society. A strike is costly to both the union organization and its individual members.¹⁰ However, equally clear is the fact that organized labour will not agree to a strike replacement scheme until it is satisfied its interests would be equally secure under the new system. Brody cogently outlines the reality of the present situation in noting that:

"Until the discovery of such a formula (to set "fair" wages and prices), bargaining power and collective negotiations - and their extensions, the lock-out and the strike - will have to remain as the second best instrument in the wage determination process."

Perspective On The Incidence Of Strikes

Though often neglected, there is also an argument that collective bargaining is being unduly criticized relative to the factual incidence of strike activity. Defenders of the strike-threat system point out that 90-95% of all negotiations are settled without a strike. They contend

that in fact the collective bargaining system, even in these times of labour unrest, is an efficient mode of industrial relations. Statistically, from 1967 to 1974 (Canada's worst year on record for number of strikes) only 5.7% of all collective agreement negotiations in the private sector resulted in strikes (or lock-outs).¹² It is argued that more man-days are lost through illness or industrial accidents than through strike activity. The contentions are clearly valid and ought to be borne in mind when considering what steps are to be taken in improving our labour relations process. Notwithstanding this, it is also clear that just as work is in progress to develop improved methods of accident prevention, so ought we to strive to improve our industrial relations record.

Purpose And Approach Of The Thesis

Examination of means for improvement of our industrial relations record is the subject and purpose towards which this research is directed. To date the bulk of the studies completed in this area have focused on alternatives to the strike system and (as mentioned above) cover a range of innovative devices as well as various proposals to imitate successful labour relations systems of other countries. A critique of some of the more prominent of these propositions forms part of the argument to be presented. However, the thrust of this work is aimed at an examination of what has happened to the strike-threat system over the last couple of decades, and particularly why the labour strike appears to be losing its utility in promoting peaceful settlements of labour negotiations. In short, the focus of this study is centered not on searching out a viable alternative to the strike-threat system, but rather it focuses on seeking the causes of the declining effectiveness of the strike-threat and on what is necessary to restore it to its former levels of efficiency in effecting

labour peace.

A diagnostic and prescriptive approach, as opposed to the more radical method of abandonment and replacement which has commonly been followed elsewhere, is felt to be more practical in the search for solutions which would be acceptable and yet effective. A strong dose of pragmatism is an essential constituent of any proposition for change in the labour-management relations field. Neither party is noted for unrestrained adherence to principles of liberalism and progressivism. As a result, before any theory could be operationalized with even a reluctant consensus of the parties there need be persuasive evidence that it does not constitute any loss of advantage for either side or represent a change for the worse in any way. The more radical the proposal, the more suspicion with which it will be viewed. Hence, the premise on which this study proceeds is that, at least in the short-run, the strike-threat system is here to stay.

There is no suggestion here that the proposition which will be made will be welcomed with open arms by labour or management. In fact, if at all seriously considered, the reception and popularity of the proposal will likely parallel that of the "temporary" personal income tax Act of 1917. Nevertheless, public pressure is mounting; labour, management, and government officials all are aware that active steps may soon be demanded. It is suggested that the recommendations to be made and argued herein offer a practical and effective means to revitalize our present industrial relations system with minimal disruption. Although the medicine may be somewhat repugnant to the tenets of free collective bargaining, if it can solve the problem it is to be preferred over major surgery.

STATEMENT OF THESIS

To those who believe in the free enterprise system of collective bargaining, time is running short in the search for a solution to the present tumultuous labour scene. As Chamberlain has put it:

"Indeed there is one school of thought which argues that without effective effort to shorten or eliminate major strike actions, the public is likely to become impatient with the whole apparatus of collective bargaining and support greater restriction on its free practice than may be necessary. If this view is valid, and at minimum it cannot be lightly brushed aside, then we find ourselves in an uncomfortable philosophical bind. We fear, on the one hand, that increased government intervention will doom collective bargaining, and on the other hand, that failure of the government to intervene will doom it no less."¹³

It is asserted here that the interests of collective bargaining are best protected by acceptance of a known and limited quantum of government intervention taken now, rather than further procrastination and the consequent risk of possible legislative overreaction as public pressure cumulates. The proposed form of that limited intervention will be put forward shortly.

Format Of The Research

The proposition which will be argued in this thesis is not one which can be readily reduced into a precise statement of hypothesis or series of hypotheses intended to be tested through a sequence of manipulations of empirical data. The approach taken here is essentially inductive as opposed to quantitative (although statistical sources have been utilized to augment the argument presented), and as a result, the strict "scientific method" is an inappropriate format. The following is a brief outline of the proposition to be developed in these pages.

Proceeding with the diagnostic approach the first step taken is to analyze the collective bargaining system and the traditional role of the

strike-threat system therein. Next, the means by which that role was achieved in times when the strike was more efficient in maintaining labour peace are examined. Finally, comparison and contrast are used to identify what has changed to render the strike less effective in its role in collective bargaining in the present day context. In short, the object is to establish what it was about the strike in former times which made it more successful in ensuring labour peace than is currently the case. The prescriptive measure then becomes restoration or reparation of those attributes of the strike-threat which have degenerated, such that revivification of labour strike utility is achieved. Logically if strike effectiveness is restored "all other things being equal"¹⁴, then the incidence and duration of strike activity should assume more normal levels.

The Thesis Stated

It is the thesis of this paper that what has changed, that at least one major reason why the strike has become less effective in ensuring peaceful settlements of labour disputes, is that, simply put, the "threat" has gone out of the strike-threat system. A threat must connote dire consequences to the recipient in order to be effective. In negotiations the strike threat must bring forth visions of economic woe. When utilized the strike must put severe financial handicaps on both parties. If not, the pressure to come to a quick settlement of the dispute is absent and it will continue much longer than necessary.

Why is the strike less effective today? The quotation from the Woods Report which appears above¹⁵ gives some insight when it states "In many of these disputes the protagonists seem to suffer less than the public". This study seeks to show that the strike has lost its impact - its threat - as a result of what will be termed "insulating tactics" by both labour

and management. By "insulating tactics" what is meant is those steps and preparations taken by the parties to shield themselves from the consequences of strike action. A number of the more prevalent and successful tactics will be examined later.¹⁶

The Proposed Solution Scheme

Assuming for now that these are in fact the factors reducing labour strike utility the question then becomes what is the solution? How can revivification of strike utility be achieved? The simplest and most logical answer is to off-set these insulating tactics. That is the proposition of this thesis. It is proposed that a monetary penalty scheme be instituted, the purpose of which would be to counter-balance the protectional gimmicks which the parties to a given dispute may have devised to avoid the economic consequences of a strike. A legislative outline for such a system will be presented at the conclusion of this paper.¹⁷

The strike effectiveness revivification scheme would have a two fold effect in promoting industrial peace. First, it would increase the parties perceived costs of failing to reach a settlement (ie. the cost of a strike) thereby promoting strike avoidance. Second, it would increase the impact of economic pressure on the parties to negotiate a quick settlement once a strike has taken place (ie. decrease the duration of strikes). The revenues from such a scheme would flow into the general revenue fund thereby indirectly compensating the public for the inconveniences it must endure as the result of a strike. Even with such a system it is recognized that additional provisions are necessary to cover essential industry or emergency disputes. The second stage of the scheme herein proposed involves a somewhat empirical cost/benefit analysis system whereby there is intervention to halt a strike when the "costs" reach a pre-determined point on

a declining benefit function. Thus a strike would only be allowed to continue so long as it is effective or useful in light of the essentiality of the operation being shut down.¹⁸ It is asserted that such a system, although suffering some empirical evaluation problems, is much superior to the present ad-hoc system based on the volume of public pressure against a given strike.

In summary the thesis to be argued is that the generally rising incidence and increasing duration of strike activity currently being experienced is in some part due to the declining effectiveness or utility of the strike-threat system. The declining utility is a result of "insulation tactics" by both labour and management through which they can greatly reduce the economic consequences of strike action. It is suggested that the most pragmatic solution, at least in the short-term, is to restore the strike-threat effectiveness by institution of a monetary penalty scheme to off-set these insulation procedures. A second stage cost/benefit triggered intervention system, in which essentiality is a weighted factor, would be used to end particularly disruptive or ineffective stoppages.

SURVEY OF THE LITERATURE

Rumblings of the declining utility of the labour strike have been in the wind for many years. News reports appear periodically analyzing a given major strike. More and more frequently such reports contain quotes such as that of the United Rubber Workers official (speaking after seventeen weeks of a strike at a major B.F. Goodrich Plant) who quipped: "I wonder if this doesn't mean the usefulness of strikes is declining".¹⁹ Also becoming more common in these reports are descriptions of activities of the parties to avoid the effects of the strike. In the above mentioned dispute at one plant some 120 salaried employees took over the posts of

the 150 strikers and kept production at better than 50% of normal operation; this combined with heavy stock piles minimized company losses. The strikers, on the other hand, received strike pay, low interest loans from their credit union, union arranged "indulgences" from the local merchants, and many had steady incomes from spouses and/or took short-term jobs. All were far from starving. As the reporters put it:

"A big union has struck a key industry for four months without creating havoc. Strikers aren't going hungry, though few are eating steak. Rubber companies continue to sell tires, though customers can't always get exactly what they want."²⁰

The Stern Article

The writing on the wall is clear, yet as previously mentioned most practitioners and academics who seek a solution to the problem have approached the search by "writing-off" the strike and exploring alternatives. As a result literature on the causes of the declining utility and on cures for the ailing strike mechanism is scarce. The only major paper found directed specifically at the issue of the declining utility of the strike was that of Professor James Stern.²¹ Stern attempts to construct a partial theory of declining utility of the strike utilizing a framework which preserves the right to strike in recommendations for rectification.

The argument put forth by Stern opens with a recitation of improvements in strike preparations which have been developed since the Second World War. For example, management tactics noted include pre-strike production increases, off-plant inventory buildup, solicitation of anticipatory purchases through advance notice to customers, supervisory operation of plants during strikes, strike insurance funds etc. Union tactics listed include increased strike funds and benefits, strategic timing, community assistance programs, inter-union loans, etc. Rationalizations both for and

against the use of the strike mechanism to settle industrial relations disputes are outlined and the conclusion is that improvements in the present system are preferable to complete replacement. Finally, three areas of policy are suggested as focuses to be studied to bring dispute settlement methods into line with "the requirements of modern technology and societal trends". Firstly, Stern suggests that some of the issues precipitating strikes should be removed from the purview of "striking issues". Secondly, he urges development of a means whereby the relative powers of the parties can be equalized to the relative equities of their positions in the minds of the public. Thirdly, he recommends efforts to change public policy to reflect the acceptance of unions as a positive industrial relations force.

It is Stern's second policy area on which the present paper concentrates - a system whereby the relative powers of the parties can be equated to the relative equities of their positions. The proposition here, however, does not follow in type that proposed by Stern. Stern proposes institution of another conciliation-mediation device with the ultimate weapon of government seizure of the operation in dispute and "some financial penalty ... which would make seizure costly for the company and the union. Profits earned and dues collected during this period could accrue to the government instead of to the parties."²² In effect the proposal amounts to an elaborate form of the non-stoppage strike.²³ It is argued here that a more effective solution lies in the proposals of Professor S.M.A. Hameed which will be discussed shortly.

The Levine Article

Before delving into a survey of the writings on the prescriptive portions of this paper an article by Gilbert Levine²⁴ deserves mention.

This short paper focuses on strike activity in the public sector, a subject with which the present work is also concerned. The thesis offered is again the declining utility of the strike, but here factors somewhat peculiar to the public sector are noted. In particular, the reasons given by Levine include advanced planning and the use of supervisory personnel, increased technological advances reducing employee necessity, decline of the monopolistic position of government branches in supplying services to the public, decreased dependence on public systems such as transit (eg. increased incidence of private car ownership), and finally, the very forceful argument that, in light of the fiscal crisis of many governmental departments, it "pays" public employers when their employees are on strike. That is, while a strike in the private sector means loss of production, sales, and revenue, there is no corresponding reduction in revenues in the public sector - tax money continues to flow in through the allocation systems despite the strike. With the payroll costs absent, a large proportion of the overhead expenses are saved thus easing budget strains. The conclusion is that new techniques must be found to improve the strike "if the strike weapon is to remain as effective as in the past".

The Hameed Articles

As noted, Stern's proposals to revamp the strike-threat system have been rejected here as complicated and of doubtful practical and effective value. The alternative offered in this thesis is based on two papers written by Professor S.M.A. Hameed, and amounts to a unification of what were essentially separate propositions. The first paper²⁵ is focused directly at the issues being studied here. It begins with the argument that the utility of the strike has been declining, but that it is still a less costly mechanism than compulsory arbitration - the altern-

ative considered. The conclusion is that:

"Therefore what is needed is to reinforce the role and function of the strike in a way that our system of free collective bargaining is preserved with as little inconvenience to the public as possible."²⁶

The format of the proposed solution is what Hameed has termed "responsive bargaining". A system which allows the two parties (labour and management) complete freedom to strike as under the present legislation, but makes them "ultimately responsible or accountable to the public from an economic point of view".

Although other factors such as strike pay, savings, and the absence of profit-loss pressure in the public sector are touched upon, Hameed leaves the impression that it is automation which has caused the effectiveness of the strike weapon to decline. While it is agreed that automation is a major factor in this phenomenon, it will be asserted here that a number of other factors have also figured largely in the present strike utility situation. Aside from this somewhat minor divergence the argument in this paper closely allies that of Hameed's. The basic proposition is that what is needed is a scheme to restore impact of the strike and thereby reduce the length of the "ordinary"²⁷ strike. By making the parties accountable to the public for the "costs" they are subjected to (as a result of the stoppage) through a system of compensation payments, a major diseconomy of the present system is corrected. The protagonists are forced to pay a levy which shifts a more equitable proportion of the costs of the disruption from the community to both the union and management, and at the same time restores some of the economic impact which serves to pressure the parties into an early settlement. The mechanics of the compensation scheme, with some modifications of those proposed by Hameed, will be discussed in Chapter Seven.

Professor Hameed suggests in his "responsive bargaining" paper that such a system could eliminate the need for an emergency dispute settlement procedure since the length of the strike would be considerably shortened.²⁸ However, the approach here is less optimistic. It is believed that disputes may still arise which will demand government intervention in the interests of the community as a whole. To this end the second stage of the proposed system suggests the institution of a consistent and predictable scheme whereby government intervention is automatically invoked when the "costs" of a given strike become prohibitive. Such a scheme is felt to be much more in line with principles of efficiency and equity than the present ad-hoc provisions.²⁹ It is the second Hameed paper³⁰ which is used as the basis for stage two of this paper's proposals. Entitled "A Theory of Strike Cost and Government Intervention" this second paper outlines the conceptual relationship between the right to strike and the right of the community to an uninterrupted flow of goods and services.

Hameed develops a cost-benefit analysis scheme which determines the point in a strike at which government intervention is advisable. The scheme suffers the ever-present problem of empirical evaluation of concepts which are difficult to quantify,³¹ but nevertheless, the basic constructs of the theory can be practically operationalized to provide much more objective and equitable criteria for government intervention than are currently in use. Chapter Eight outlines the proposed utilization of this theory.

Thus, to summarize this survey of the literature, it can be concluded that materials on the declining utility of the strike and proposals to reverse this trend are very scant indeed. The vast majority of studies focus on alternatives. Stern's paper studies the declining utility

phenomenon and sets a basis for further research. Levine's article suggests some aspects of the declining utility which are peculiar to the public sector. Finally Hameed's "Responsive Bargaining" paper overviews the declining utility and proposes a compensation scheme which will restore the impact of the strike on the parties. The second Hameed paper was not concerned with declining strike effectiveness per se, but appears to offer an interesting and workable model for a more objective government intervention policy.

SCOPE OF THE STUDY

The Jurisdiction

Before proceeding with the presentation it is necessary to outline some of the parameters within which this study was undertaken. First it is to be noted that the setting is the Alberta jurisdiction, and that the study was done, and the proposition developed, with a view to contributing to labour peace in this province. It may well also be of relevance to other Canadian and North American jurisdictions. An effort has been made to utilize Alberta data wherever possible, though certainly other Canadian and even American sources have been noted where it was felt helpful to do so. The legislation studied, save that covering Federal employees working within the province, is Alberta's.

The Premise

One of the major premises on which this study is based is that collective bargaining and the adversarial context, at least in the short-term, is here to stay. Despite exhortations from some industrial relationsists that our adversarial system is outmoded or dead,³² there are valid arguments to support the above premise. Certainly there have been successful attempts at worker participation schemes in Alberta and elsewhere in

Canada. One cannot deny the existence of Edmonton's Byers Transport (which is also employee owned) or of Tembec Forest Products, Supreme Aluminum Industries or the Cox dental lab, etc.³³ The point to be made is that although industrial democracy may go a long way in removing the adversarial context, broad acceptance of the principle and operation of such a scheme is in the more distant future than is to be looked at in this study. Professor Terrence White has reported that his studies reveal little support for the concept from either labour or management at the present time. Speaking to labour and management representatives at a seminar on industrial democracy, White stated:

"And to impose an unfamiliar, superficially understood model into non-receptive or apathetic settings is almost to ensure that the venture will be unsuccessful... I believe that such action by the Alberta government at this time would be unwise and, in any event, highly unlikely."³⁴

The environment in Alberta is not yet ready for a change from the adversarial system of industrial relations. This study was to develop an immediately feasible short-term solution to current problems of labour unrest. For that reason the concept of industrial democracy lies beyond the scope of this work.³⁵

The Time Period

In terms of a time boundary, an effort has been made to restrict source material to that written in more recent years. More specifically, unless a particular writing was felt to be especially relevant to the argument being presented, books and periodicals published before 1960 were generally disregarded. Similarly, statistical data have been traced back only to 1960. A special attempt has been made to review materials published since 1968 as it is felt the Task Force report represents a thorough study of the pre '68 labour scene. The insights developed therein can certainly

not be improved here. Further, 1968 has been cited as the turning point when "big" demands in wages and benefits changed from bargaining tactics to serious strike issues. The overall justification for the general restriction of the study to roughly the last seventeen years is that it represents a necessary cut-off point resulting from what might be termed marginal analysis of research time. The Alberta labour relations scene, and the discipline of industrial relations in general, has not been static and theories and data simply become outdated.

Briefly, the parameters of this study then are: (1) geographically centered on Alberta; (2) premised on the belief that collective bargaining and the adversarial context will dominate the Alberta industrial relations system in the short-term and any solutions to the current strike situation must necessarily be within such a context; and, (3) chronologically limited to source material taken from that published since 1960 with an emphasis from 1968 on.

OUTLINE OF THE PRESENTATION

Before continuing with the development of this thesis a brief outline is given here to aid understanding of the function of the chapters which follow in the overall presentation. Chapter Two is a study of the role of strikes in the collective bargaining system. It looks at the concept of collective bargaining and then at how the strike-threat system fits into that concept.

Chapter Three is a study of the current legal provisions for strikes in Alberta in both the public and private sectors. The differences in the provisions for the two sectors are discussed and finally, brief attention is given to "in-term" and illegal strikes. Chapter Four looks at the incidence of strike activity in Alberta and some comparisons are

made with other provinces and the national average. A breakdown into public and private sector incidence is also given.

Chapter Five is one of the more crucial sections of the thesis as it deals with the declining utility of the strike. It contains a discussion of a number of the prevalent factors contributing to the declining utility dilemma and presents data gathered on the evidence of those factors in Alberta. Chapter Six is a study of selected alternatives to the strike. "Alternatives" is used in the loose sense of the word since variations of the strike itself are also viewed. The chapter concludes none of the models reviewed are particularly appropriate to the current Alberta environment.

Chapter Seven sets out the first stage of the proposition being offered for revivification of strike utility - the scheme to restore "Responsive Bargaining" through increasing the cost factor of work stoppages to the parties. Chapter Eight outlines the second stage of the proposal which sets out a government intervention formula for halting exceptionally disruptive disputes. Finally, Chapter Nine presents the summary and conclusions of this thesis and ends with some suggestions for further research.

FOOTNOTES

CHAPTER I - INTRODUCTION

1. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Industrial Relations, (1968), p. 3.

2. Source - Labour Gazette, Vol. 74, No. 4 (April 1974), p. 194. Note the number of workers involved in strikes in 1976 is not yet available. The 1975 figures were somewhat higher (1171 strikes and 10,908,810 man-days lost) indicating a slight drop in strike activity in 1976. The 1976 data is still under "preliminary" status.

3. For example, Thompson, Mark, and Cairnie, James "Compulsory Arbitration: The Case of British Columbia Teachers", Industrial and Labor Relations Review, Vol. 27 No. 1 (October 1973), pp. 3-17; see also the comment by Peter Feuille and Reply in Vol. 28, No. 3, pp. 432-438.

4. For example, Sosnick, Stephen H., "Non-stoppage Strikes: A New Approach", Industrial and Labor Relations Review, Vol. 18, No. 1 (October 1964), pp. 73-80.

5. Connaghan, Charles J., "Partnership or Marriage of Convenience: A Critical Examination of Contemporary Labour Relations in West Germany With Suggestions for Improving Labour-Management Relations Based on the West-German Experience". This was a Labour Canada sponsored study by the B.C. university professor. For a brief outline of the propositions and arguments of the report see Labour Gazette, Vol. 76, No. 8 (August 1976), pp. 405-407.

6. Survey by The Canadian Institute of Public Opinion noted in Labour Gazette, Vol. 76, No. 2 (February 1976), p. 62.

7. See Dixon, James E., The Wage Decision Process and Collective Bargaining, M.B.A. Thesis (No. 28), University of Alberta (1967), p. 3, footnotes 3 and 4 wherein the opinions of Stephen G. Pertichinis and George Saunders are contrasted to those of Arthur M. Ross and Charles E. Lindblom.

8. For example, Kelly, L.A. and Kumar, P., "Inflation and Collective Bargaining", Labour Gazette, Vol. 75, No. 5 (May 1975), pp. 279-284; Smith, Douglas A., "The Impact of Inflation on Strike Activity in Canada", Relations Industrielles, Vol. 32, No. 1 (January 1976), pp. 139-145.

9. Crispo, John, as quoted from his address to the Public Service Alliance of Canada 1970 convention in Labour Gazette, Vol. 70, No. 4 (April 1970), p. 279.

10. Note the words of George Meany, A.F.L.-C.I.O. president as reported in Hart, Harold H., The Strike: For and Against, (1971), pp. 6-7.

11. Brody, Bernard, "Strikes: Reluctant Instrument in a Free Enterprise Economy", Labour Gazette, Vol. 71, No. 1 (January 1971), p. 20, brackets added.

12. Armstrong, T.E., "Collective Bargaining Unfairly Criticized", Labour Gazette, Vol. 75, No. 6 (June 1975), p. 135.

13. Chamberlain, Neil W., "Strikes in Contemporary Context", Industrial and Labor Relations Review, Vol. 20, No. 4 (July 1967), p. 608.

14. It is recognized that clearly all other things are not equal. Obviously there are other major factors operating on the incidence of strikes. Inflationary pressure and the greater militancy of the younger worker are but two such factors which are beyond remedy by simple restoration of strike effectiveness.

15. See page one, supra.

16. See Chapter Five, infra.

17. See appendix A, infra. See also Chapter Seven for the full mechanics of the first stage of the scheme.

18. See Chapter Eight for the mechanics of this second stage.

19. As quoted in Winter, Ralph E. and Wysocki, Bernard Jr., "How Union, Tire Firms Cushioned Selves From Strike Impact, Prolonging Walkout", The Wall Street Journal, Friday, August 20, 1976, p. 22.

20. Ibid., p. 22.

21. Stern, James L., "The Declining Utility of the Strike", Industrial and Labor Relations Review, Vol. 18, No. 1 (October 1965), pp. 60-71.

22. Ibid., p. 72.

23. See Chapter Six, infra, for a discussion of this mechanism.

24. Levine, Gilbert, "The Inevitability of Public-Sector Strikes in Canada", Labour Gazette, Vol. 77, No. 3 (March 1977), pp. 117-120.

25. Hameed, S.M.A., "Responsive Bargaining: Freedom to Strike with Responsibility", Relations Industrielles, Vol. 29, No. 1 (March 1974), pp. 210-217.

26. Ibid., p. 210.

27. That is, the non-essential strike ie. those not subject to emergency dispute provisions.

28. Hameed, op. cit. (see note 25), p. 217.

29. In Alberta these provisions are set out in The Alberta Labour Act, 1973, S.A. 1973, c. 33, s. 163-165, as amend., S.A. 1975, c. 60.

30. Hameed, S.M.A., "A Theory of Strike Cost and Government Intervention Policy", Indian Journal of Industrial Relations, Vol. 7, NO. 2 (October 1971), pp. 155-173.

31. For example, "loss of economic freedom for the community" and "emotional and political benefits of the strike".

32. For example, Finn, Ed, "The Adversarial System is Dead - But it Won't Lie Down", Labour Gazette, Vol. 74, No. 10 (October 1974), pp. 694-704.

33. For an article on these and other success stories in employee participation see Nightengal, Donald V., "The Concept and Application of Employee Participation in Canada", Labour Gazette, Vol. 77,

34. As quoted in the Edmonton Journal, Wednesday, May 18, 1977, p. 57.

35. The reader interested in the concept of co-determination might well find the eight articles which appear in Industrial Relations, Vol. 9, No. 2 (February 1970) helpful.

CHAPTER II

THE ROLE OF STRIKES IN COLLECTIVE BARGAINING

THE CONCEPT OF COLLECTIVE BARGAINING

Before an understanding of the role of strikes in collective bargaining can be attained it is necessary to appreciate the basic nature of the collective bargaining process itself. A simple definition for such a complex institution as collective bargaining is difficult, if not impossible, to derive. Nevertheless before delving into a few of the negotiation theories it is necessary to limit the meaning of the term as it will be used here.¹ Sidney and Beatrice Webb, the reputed source of the phrase, did not give a definition per se, but rather set out a number of examples and contrasts (here to "individual bargaining") such as:

"Instead of the employer making a series of separate contracts with isolated individuals, he meets with a collective will, and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group, or class, or grade, will be engaged."²

Needless to say a rather simple illustration and one which leaves a number of parameters unsettled.

Various authors and labour dictionaries offer more succinct explanations of collective bargaining and it is from these³ that the following was derived to be put forth as the meaning of the term as it is to be used within this chapter: collective bargaining is a method or process through which are developed joint understandings as to wages or salaries, hours of work, and other conditions of employment, by direct negotiation between an employer entity (governmental or private) and a labour organiz-

ation (union or association) representing exclusively a defined group of employees of said employer (appropriate bargaining unit) which understandings are formalized in a collective agreement.

NEGOTIATION MODELS

Having thus limited the meaning of the phrase as it is used here, a brief review of a few of the models which theorize the operation of collective negotiations will be advantageous to the arguments to be presented later. Industrial relations literature has not neglected the theoretical constructs of the bargaining process. The orientations of such theories range from the human relations field, which stress success relative to common bases for interaction, perceptions of common goals, and the need to de-emphasize conflict areas,⁴ to the empirical economic models of bilateral monopoly.⁵ The models to be examined here are more purely industrial relations orientated and, more specifically, they focus on bargaining power.⁶ Bargaining power models were selected since they more clearly outline the role of the strike-threat system in collective bargaining process. The theories of Chamberlain,⁷ Pen,⁸ Stevens⁹ and Mabry¹⁰ have been chosen and they represent a similar and progressively more complex sample of the more prominent conceptualizations.

The Chamberlain Model

Chamberlain's model is of the simple bargaining power type. He basically defines bargaining power in terms of the costs of disagreement and shows how the terms of the agreement are affected by a cost evaluation of the parties of agreeing to, versus refusing to agree to, offers and demands. In other words the bargaining power of the union is seen as the cost to management of refusing the union's demands relative to the cost to them of agreeing to those demands. Similarly, management's bargaining

power is the cost to the union of refusing management's offer relative to the cost of accepting the offer. Collective bargaining is then a process in which offers and demands are exchanged in negotiations and the parties evaluate each others proposals in terms of the cost of refusing to concede or accept. The higher the cost of disagreement to one party the greater bargaining power of the other. The model can be expressed in a simple equation as follows:

Figure 2-1

$$\frac{\text{CMR}}{\text{CMA}} \begin{matrix} > \\ < \end{matrix} \frac{\text{CUR}}{\text{CUA}}$$

where: CMR = cost to management of refusing the union's demands; CMA = cost to management of agreeing to the union's demands; CUR = cost to the union of refusing management's offer; CUA = cost to the union of accepting management's offer.

For purposes of a more direct adaptation to this paper the costs of agreement and disagreement can be viewed as the cost to management of agreeing to the union's demand versus the costs it will suffer by "taking" a strike. Likewise, the cost to the union would be that of accepting the offer of management which is less than its demand versus the costs of calling a strike.

The Pen Model

Pen's model is somewhat more complex than Chamberlain's. It utilizes probability functions for estimating the likelihood of given costs being experienced (eg. the probability a strike would be called, and its costs, if demands are not met) as well as incorporating utility functions to express evaluations of demands and offers. Settlement in this model is achieved when both the union's and management's estimated costs of agreement relative to their estimated costs of disagreement are equal to each others estimated "will to resist". Given that each of the parties' estimates of costs will differ at the onset of negotiations, the purpose of collective

bargaining is convergence to a common set of cost evaluations. In other words, the bargaining process serves the function of setting the scene for information exchange in order that the parties can "feel out" and estimate each others utility functions for the various terms at issue and predict the opposition's resistance (eg. probability of a strike stand). Bargaining power then is a party's ability to shift the other side's estimate of costs (ie. decrease the estimated cost of agreement and increase that of disagreement). Pen's model can be mathematically expressed as follows:

Figure 2-2

$$\text{Union Bargaining: } \frac{\partial U}{\partial \text{Power}} \frac{U_{wu} - U_w}{U_{wu} - U_s} - P(M_w - M_s) \gtrless 0$$

$$\text{Management Bargaining: } \frac{\partial M}{\partial \text{Power}} \frac{M_{wm} - M_w}{M_{wm} - M_s} - P(U_w - U_s) \gtrless 0$$

where: ∂U = union's probability factor of "cost" being experienced; U_{wu} = union's utility function for optimal desired wage; U_w = current offer being considered; U_s = wage which could be obtained by conflict; P = probability of resistance; M_w = current demand being considered; M_s = settlement which could be attained by strike (lock-out); ∂M = management's probability factor of "cost" being experienced; and, M_{wm} = management's utility function for optimal desired wage.

Note: $U_{wu} - U_w$ = cost of agreement to the union (what it loses if it agrees to the current offer); $U_{wu} - U_s$ = cost of disagreement to the union (optimal desired wage less what can be gained by conflict); and, $M_w - M_s$ = management's will to resist. The same would hold for the management equation - mutatis mutandis.

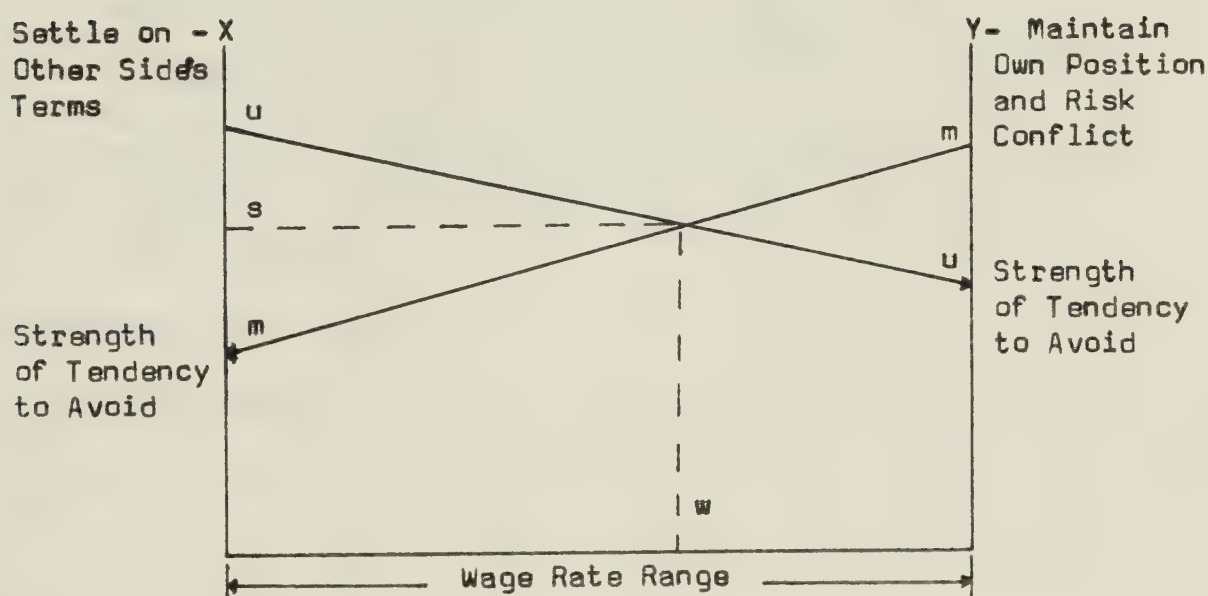
Equilibrium or settlement occurs when both equations, simultaneously, equal zero. Pen goes on to describe the bargaining process as a series of shifts in the equations resulting from changes in the parties' evaluations of the cost and probability elements following information exchange.

The Stevens Model

Stevens' model is of the "conflict choice" or, more particularly, the "avoidance-avoidance" type; simply put, it is based on the idea that

the parties bargain in a constant conflict context and are forced to choose between the lesser of two evils. The union's goal and the management's goal are seen as extremes, and the distance between is a range of wage rates. The premise of Stevens' model is that "...the strength of an individual's tendency to avoid a negative goal (eg. settle solely on union's terms or insist on own terms and risk conflict) is a decreasing function of his distance from the goal".¹¹ The model, in simple graphic form, is as follows:

Figure 2-3



Both x (settle on the other party's terms) and y (maintain own position and risk conflict) are "negative" goals. Function uu is an avoidance gradient for x; it shows the increasing tendency to avoid x. Analogously, mm is the avoidance gradient for y. The intersection of the two functions at s, giving wage rate w, is where the strength of the tendency to avoid x is equal to the strength of the tendency to avoid y. In other words, the party's equilibrium position is in essence a compromise at which it will settle. Both union and management each have a separate set of avoidance gradients. In bargaining each tries to lower the uu function or raise

the mm function of the other party in order to get a settlement on terms most favourable to its side. A settlement is reached when both parties arrive at the same intersection point on their respective (and now identical) sets of avoidance curves. Thus again the bargaining system is seen as a process whereby information is exchanged which will ultimately "gyrate" the parties to a settlement equilibrium. Stevens states:

"...we may view the negotiator during the early stages as primarily concerned with the competitive tactical problem of moving his opponent's equilibrium position (the least favourable terms that the opponent is willing to agree to) as much as possible in his own behalf. Meanwhile, the negotiator occupies his own (as yet unannounced) equilibrium position, subject to the influence of his opponent's competitive tactics. The necessary condition for agreement will have been met when these equilibrium positions are consonant...At some point, especially if there is a bargaining deadline, competitive attempts to influence the opponent will probably give way to the problem of "revealing" one's own equilibrium position..."¹²

In other words, achievement of a settlement necessitates that at some point sufficient information is exchanged such that both parties are aware of the best terms the other will give and have sufficiently modified their avoidance gradients to a mutual compromise position. The alternative to consonant equilibriums is conflict.

The Mabry Model

Mabry has developed a more sophisticated model than those preceding which incorporates a form of utility analysis through which more subjective evaluations and uncertainty are functionally related to a range of benefit levels. These subjective evaluations can be transformed into cost and revenue functions thereby creating consistency with the economic theory models while remaining associative with the conflict-choice models (eg. Stevens' model supra.). Further, it recognizes establishment and modification of the parties' goals as bargaining progresses, and, rather than operating

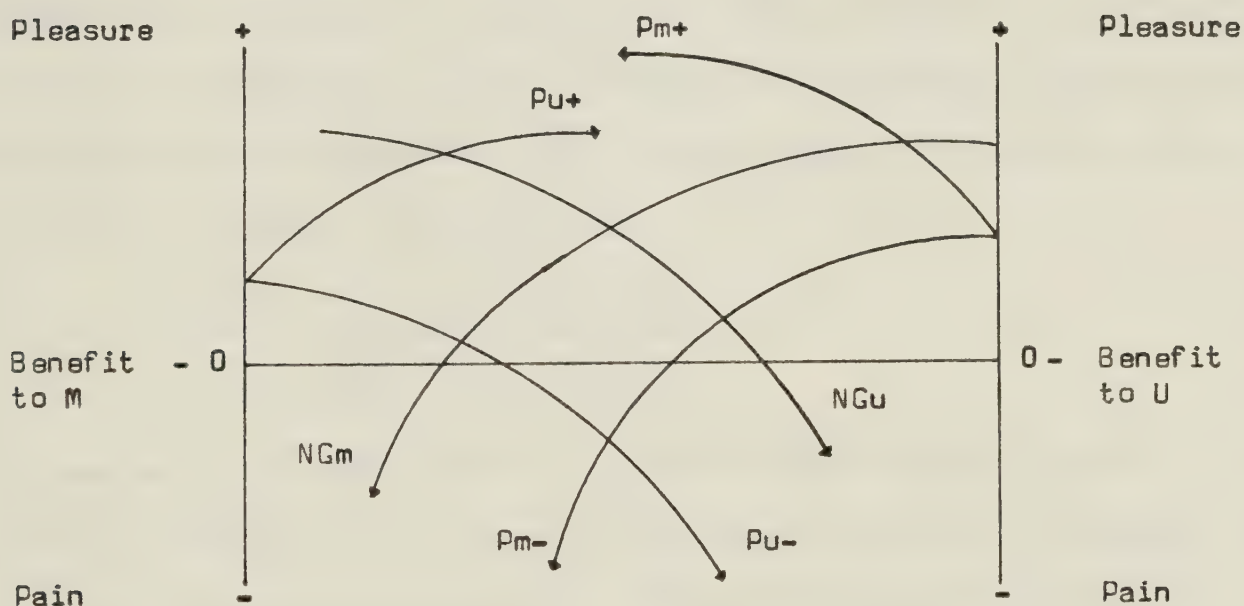
with "cost" factors only, it utilizes both negative and positive benefit evaluation. This latter feature contributes to the name which Mabry has given the model - "The Net-Gain Theory of Bargaining". For purposes here it is not necessary to discuss the economic transformation of the model noted above¹³ in the outline below.

Mabry characterizes collective bargaining as a situation in which the interests of the parties are opposed (conflict) noting the ability of either party to obtain benefits requires the other party to concede them (ie. give up something of value). Given this simple economic premise, Mabry then develops it into what he terms the "pain-and-pleasure principle" (disutility and utility functions) whereby a party will make valuable concessions (items associated with "pleasure") only if it is compensated for doing so by receiving concessions of equivalent value, or if the "pain" associated with not making those concessions is greater than the "pleasure" associated with not relinquishing. Conversely then, the ability of a party to win concessions (bargaining power) can be simply viewed as a function of that party's ability to reward (give pleasure) or punish (inflict pain) the opponent. However since the infliction of pain on an opponent (eg. a strike) may very well involve concurrent self-infliction of pain the party must evaluate the total pleasure to be derived from the concession sought, less the total pain which must be endured to coerce the opponent into conceding. Hence, more correctly, a party's bargaining power (ability to win a concession) depends on both the ability to reward or punish an opponent and the ability to withstand self-inflicted pain. This latter aspect is the key element of the "insulation tactics" to be discussed in Chapter Five.

Given that the ability to reward and, especially, to punish are in effect merely evaluations until actually experienced (eg. a strike is

called or the duration of same remains unknown) bargaining power also includes the ability to influence the opponent's estimates thereof. Thus Mabry's concept of bargaining can be described as a process by which rewards and punishments are communicated and ascertained in relation to goals and that by this process of communication (information exchange) the parties strive to alter one another's pain and pleasure functions in such a manner as agreement becomes possible. The essence of bargaining power thereby becomes the ability to alter the net-gain function of the other party more than the first party's net-gain function is altered by the other. Graphically Mabry's model appears as follows:

Figure 2-4



where: Pu^+ = an estimate by the union of the pleasure it will experience from receiving a given concession; Pu^- = an estimate by the union of the pain it must be willing to endure in order to force management to give the concession; Pm^+ = an estimate by the union of the pleasure experienced by management in not giving the concession desired (ie. the pain management would experience by conceding); Pm^- = an estimate by the union of the pain it can inflict on management if they fail to make the concession; NGu = an estimate by the union of its net-gain from the issue under consideration (ie. $Pu^+ + Pu^-$); and NGm = an estimate by the union of management's net gain from not making the concession (ie. $Pm^+ + Pm^-$).

Management is assumed to have a similar set of functions with respect to the given issue.

The parties' objectives in bargaining are to get the net gain functions as far as possible to their respective sides. Algebraically, bargaining power for the union is greater if $(\Delta[f(Pu^+ + Pu^-)] / \Delta[g(Pm^+ + Pm^-)]) < -1$ and, conversely, bargaining power for management is greater if $(\Delta[g(Pm^+ + Pm^-)] / \Delta[f(Pu^+ + Pu^-)]) < -1$ where $\Delta[f(Pu^+ + Pu^-)]$ is the union's estimate of the change in its net-gain function and $\Delta[g(Pm^+ + Pm^-)]$ is management's estimate of the change in its net-gain function. Manipulation of the net-gain functions requires alteration of the pain and pleasure functions. Pleasure functions for management and the union are negatively related as are their pain functions, but their respective pain-pleasure functions are positively related (although not necessarily proportionally). Thus the following relations denote net-gain function movements resultant from pain or pleasure function changes:

If $Pu^+ \uparrow$, then $Ng_u \uparrow$, and $Ng_m \downarrow$
 If $Pu^- \uparrow$, then $Ng_u \downarrow$, and $Ng_m \uparrow$
 If $Pm^+ \uparrow$, then $Ng_u \downarrow$, and $Ng_m \uparrow$
 If $Pm^- \uparrow$, then $Ng_u \uparrow$, and $Ng_m \downarrow$

The inverse relationship of the net-gain functions relates directly to the premise of Mabry's theory that the interests (or goals) of the parties are, in large, diametrically opposed (ie. bargaining proceeds in a general environment of adversarism).

Negotiation Models In Perspective

This overview of selected bargaining models has been somewhat brief and perhaps therefore lacks in detail. Nevertheless the purpose here is only to aid development of an understanding of the negotiation process. All bargaining models are subject to significant limitations on operationalization value. This is particularly notable with respect to empirical

valuations of subjective elements and the necessary but frequently unrealistic assumptions which precede their formulations. Notwithstanding this, such conceptualizations can be effectively applied as a basis for analyzing the constructs of the negotiation process to develop insights into the role which the various components of the process play in the overall collective bargaining concept.

It must be further kept in mind that the models presented illustrate only a part of the total collective bargaining concept - that segment which relates to the negotiation process. Negotiation models are, by themselves, inadequate for explaining the collective bargaining concept in its complex sense. Hameed has published a paper¹⁴ which outlines the deficiencies of uni-dimensional models and develops an integrated theory which combines the negotiation dimension with the two other integral components of collective bargaining: employee organization into unions, duly certified as bargaining agents; plus employer associations (if any); and, the socio-economic and legal sanctions in the form of permissive strikes and lock-outs.¹⁵

The Hameed paper provides the constructs of a more complete and integrated body of theory from the deductive and inductive results of three conceptual frameworks: (1) Common's theory of the labour movement explaining the rationality in workers' decision to join a union and union behavior and objectives with regards to monetary and non-monetary issues; (2) Marginalist-Behavioralist theories of the firm used to explain management resistance to unions on economic and behavioral grounds (ie. profit maximization and "satisfying" functions); and, (3) the Stevens-Somers model explaining the mechanism and output of conflict resolution through union-management negotiation. To these Hameed adds Common's legal framework of capitalism to complete a group of four causal or independent variables

which operate on the six dependent variables in his theory: (1) degree of unionism; (2) management resistance to unions; (3) structure of unions and bargaining relationship; (4) type of collective bargaining relationship (defines degree of conflict); (5) process or mechanism of collective bargaining (conflict resolution); and (6) the outcome of negotiations.¹⁶

The Hameed paper clearly shows that negotiation models are but a partial explanation in collective bargaining theory. However, negotiation models isolate the role of the strike in the bargaining process and as such are sufficient for purposes here. A more comprehensive theory, while admittedly more realistic, would shroud the focus here on the role of the strike in bargaining which is a key element in the argument of the proposition presented in this thesis. Further justification for the purely economic negotiation model approach taken here is offered later in this chapter.

STRIKES AND THE BARGAINING PROCESS

Chapter One contains a quote from Professor Crispo which unequivocally asserts that the strike is "...an indispensable part of our collective bargaining system..." which "...enables it to function".¹⁷ There are many other prominent labour relationists, especially from the labour side of the table, who would agree with him. Indeed the Woods' Report adopts this same premise when it describes collective bargaining as "...the process by which groups of organized workers and those desiring their services resolve their differences through reason, the threat of economic conflict, or actual conflict".¹⁸ The Report also notes the inherent contradiction in such a presumption, which in effect creates a system that can cogently be described as "antagonistic cooperation",¹⁹ when it states: "paradoxical as it may appear, collective bargaining is designed

to resolve conflict through conflict, or at least through threat of conflict".²⁰ Although a few are seriously questioning the efficacy of the strike-threat system in the collective bargaining process,²¹ a clear majority of very influential individuals are committed to the belief that strikes are an integral part of our free enterprise adversary system. The minority view does however create a perplexing challenge since it necessitates justification of the more traditional stand. The question becomes: why are strikes integral and what does the strike-threat do for the collective bargaining process? Since this paper allies with those who assert that the strike is essential to the process an attempt will be made here to answer these challenges.

The Necessity Of The Strike

To begin, if we return to the four negotiation models which were outlined at the beginning of this chapter it is clear that all of the conceptualizations have at least one element in common. The underlying trade-off at issue in each is, in simple terms, the cost of avoiding conflict (ie. the cost of conceding to the other party's terms) versus the cost of refusing to concede to the other's demands and as a result thereof having to engage in conflict (ie. a strike). In other words, in each of these models the "pressure" which prevents the parties from simply making their offers and demands and thereafter refusing any further compromise (in the classic "Boulwareism" tradition) is that the alternative to compromise is more costly than agreement.²² If the cost of refusal to compromise is less than the cost of the compromise then, at least in theory, the force which is intended to coerce capitulation will be insufficient to assure settlement and strife will result (this aspect of the argument being presented here is also directly related to the proposition dealing with

"insulation tactics" to be made in Chapter Seven, infra.). To put it another way, it is only because the threat of conflict is perceived as costing the parties more than compromise would cost that increased offers and reduced demands are made.

Taking Mabry's model to further explicate the point, it was shown that both union and management estimate a set of "pain" and "pleasure" functions (disutility and utility functions) for both themselves and for each other. These are then developed into net gain functions. During the course of negotiations information is exchanged, strategies are utilized, and awareness of each other's flexibilities and inflexibilities on given issues is heightened. As one party's inflexible demands (the least favourable terms on which it is willing to settle) are identified, the other party must either concede and pay the cost ("pain") of that concession or refuse to concede and endure the costs of the consequential conflict. That decision, in the simple economic explanation, will be based on whether the net gain estimate of concession is greater or less than the net gain estimate viz the conflict route. If the cost of conflict is greater, rationally, the party will concede. Thus the role of the strike in the collective bargaining process is to make the cost of disagreement appear greater (at least up to a point) than that of agreement and thereby coerce compromise. Without the "or else" threat of the strike connotating severe economic sanctions the requisite duress is absent. As mentioned previously, an idle threat is of little consequence - the antagonist must possess the means to carry it out such that the addressee perceives actualized "pain" of conflict as overbalancing that of compromise.

The Efficacy Of Substitutes

Given that the above is at least an acceptable (if not taken as

correct) explanation of what the strike-threat does for the collective bargaining process, the only other prominent challenge to the essentiality of the strike to the system is what has been dubbed "the \$64.00 question": is there not an alternative device which could equally well provide the coercive alternative which is prerequisite to an effective bargaining process in an adversary system?²³ Although a study of alternatives to the strike-threat system is the subject of Chapter Six, the superficially most appealing substitute, compulsory arbitration, will be briefly looked at here as a case in point. Compulsory arbitration has served as our system of settling rights' disputes for some time and, in light of its effectiveness in such issues, it is therefore commonly proposed as a viable alternative threat to compel compromise in contract negotiations. The basic objection to such a system is of course that inherent to its nature is the absence of mutual consent of the parties to the settlement ie. the resultant collective agreement is not really an agreement, but rather it is an imposed settlement made by a third "outside" party backed by the government and the judiciary. But even in the absence of this major defect there is a much more serious fault with such a system as it relates to the bargaining process: rather than "forcing" compromise offers and demands, compulsory arbitration may well inhibit them. The Woods' Report outlines the problem as follows:

"One of the worst features of compulsory arbitration is its potentially corrosive effect on the decision making process both within and between unions and management. It is natural that where both sides expect arbitration at the end of the line, should they fail to agree, there will be a tendency to hold back a little for fear of establishing a new floor or ceiling for the arbitration. There will be an equal reluctance on both sides to concede anything lest it be something the arbitrator might force them to give in his award."²⁴

In terms of the Chamberlain model, bargaining under the ultimate threat of

arbitration (as opposed to the strike) may well have the effect of decreasing the cost of refusing to compromise since the consequences thereof will not be the economic warfare of strike action and the financial wounds therefrom, but rather they will merely be the chance of an adverse arbitration decision the upper limit of which, at the 99% confidence interval, will be the opponent's demands. Conversely, the arbitration system will also increase the perceived cost of making a compromise offer since such an offer on any given issue is no assurance that complete settlement will be reached. Thus, given that it is well known that arbitrators commonly take settled issues and the latest state of offers on the table previous to the breakdown as benchmarks from which to proceed, any compromise offer made to avert breakdown may well be more costly in that it becomes the basis for a further "compromise" imposed by the arbitrator. Hence arbitration, in terms of the Chamberlain formulation previously presented, may decrease both CMR and CUR while at the same time increasing CMA and CUA with the result that, since cost of disagreement is less than that of agreement, the bargaining process breaks down due to the failure of the duress element.

The Lockout

Before leaving this section on the role of strikes in bargaining it should be mentioned that the absence of discussion, or even citation, of the purported quid pro quo to the union's right to strike which has been given to management in our legislation (ie. the lockout) is not the result of oversight. The proposition advanced in the Woods' Report²⁵ and later adopted by the Canadian Manufacturer's Association²⁶ is also accepted here. That is, that the lockout is rarely the employer's economic sanction equivalent to the union's strike right, but rather it is the employer's ability to take a strike which determines management's bargaining power. Hence

the lockout concept has been excluded from this discussion although it is conceded that in isolated situations the lockout may well be the threat which stimulates the bargaining process. Further, the exclusion of the lockout concept from this study does not necessarily mean the proposition in the thesis is inapplicable thereto.

To summarize this section, it has been argued that the role of the strike in the collective bargaining process is to make the perceived cost of disagreement or refusal to compromise greater (at least up to a point) than that of agreement and to thereby coerce compromise.²⁷ As long as a strike threatens greater loss to at least one of the parties if it disagrees than if it agrees with the other's terms there is reason for them to settle. The conclusion was that the strike is integral to optimally effective labour negotiations. In the less cautious words of Chamberlain and Kuhn "...the possibility or ultimate threat of strikes is a necessary condition for collective bargaining".²⁸

COSTS AND BENEFITS OF STRIKES

It is not the purpose here to delve into a deep analysis of the web of costs and benefits which surround and spill over from a given strike. The focus here is the micro aspect of the strike - the effects on the immediate parties (labour and management). The intent is to give a cursory outline to stimulate thought on the labyrinth which shrouds the question as to why strikes are called. The first observation to be noted is that both labour and management are well aware that there are rarely any winners in a strike. This is becoming increasingly more so as the average duration of strikes increases and thereby raises the costs of such action (which, as will be noted later, are not entirely being borne by the protagonists) disproportionately to the increments in benefits which can be achieved

through the mechanism.

The most common costs of a strike to the union "side" include loss of wages to the membership, losses to the union treasury of dues which would have been paid in and of course the drain on union funds caused by payment of strike benefits. Further a strike always involves a risk to union officials who may well be defeated for office if the strike goes badly for members. To the company likely losses include those from revenue forgone and customers lost (either temporarily or permanently), and also the costs of covering fixed overhead such as salaries, rent, depreciation, etc. while nonproductive. There is also the menacing threat that prospective investors may shy away from the company beset by labour problems.

If one is tempted to treat such losses as relatively insignificant in the long-run consider, for example, the effects of the rubber workers' strike mentioned above.²⁹ B.F. Goodrich Company reported an approximate loss of \$8 million for its third quarter resulting in large from a \$61.5 million drop in sales attributed to shortages from the strike. The loss contributed to a \$7.1 million deficit for the first nine months (46¢/share) compared to a profit of \$18.2 million (\$1.18/share) for the same period the previous year (1975).³⁰ The insulating measures which were undertaken prevented a total shutdown thus reducing the pressure to settle and prolonging the conflict thereby slowly accumulating the massive loss. Needless to say the strike will have significant financial and investment implications for the firm for many years to come. Similarly, a strike can cripple the assets of the union. In a strike at United Aircraft (Quebec) the estimated cost to the union of the stoppage was \$5 million, with an additional \$9 million in lost wages to the 2200 membership.³¹ Paradoxically, suffering such losses may well serve to perpetuate the actual employ-

ment of the strike weapon. As Finn put it:

"...so it is something of a vicious circle. As more and longer strikes drain union finances, they have to win larger wage increases so their members can afford higher union dues which in turn entails strikes and more depletion of strike funds."³²

An Example Of Strike Costs To The Worker

Before leaving this discussion on the costs of strikes, let us consider a somewhat oversimplified example of the cost to the individual worker of strike action relative to what is gained. Starting with a pre-strike wage rate of \$6.00/hour and a union demand of a 10% increase (60¢/hour) over one year with management's offer firm at 8% (48¢/hour), the parties reach impasse and a strike is called which lasts two weeks (10 working days at 8 hours/day) and results in management capitulation to the additional 2% demanded. The cost to the worker in lost wages would be:

$$10 \text{ days} \times 8 \text{ hours/day} \times \$6.00/\text{hour} = \$480.00$$

In most cases strike pay would not begin until at least the later stages of the strike and at any rate it can be argued that, if paid at all for such a short strike, such benefits, like any other "insurance" scheme, are paid for in the long run by the worker through his dues; thus, strike pay will not be considered here. Since the worker could have gotten 8% without a strike, his net gain from the strike is 2% or 12¢/hour. Hence to recover the \$480.00 in lost wages he will have to work:

$$\begin{aligned} \$480.00 \div 12¢/\text{hour} &= 4000 \text{ hours} \div 8 \text{ hours/day} = 500 \text{ days} \\ 500 \text{ days} \div 5 \text{ days/week} &= 100 \text{ weeks} \div 52 \text{ weeks/year} = 1.9 \text{ years} \end{aligned}$$

It is not contended that this simple illustration represents the true effects experienced in reality. Many elements such as taxation, loss of health and pension plan contributions etc. have not been considered. Nevertheless, even when the effects of a higher base rate on future wages

and benefits are allowed for, it can still be concluded that it may well take literally years for a worker to make up lost wages from even a relatively short strike.

Benefits From Strikes

But what of the benefits of a strike? Certainly it can be said that in the macro sense strikes have improved the workers' quarter over the decades, but in the micro sense the individual's net benefit from a given strike may well be negligible if not negative. A survey of the literature reveals little in the way of enumeration of the benefits of the strike to the isolated worker. Perhaps the only clear benefit of the strike to the parties in the short-run is that of its cathartic effects ie. the beneficial effects of "letting off steam" or "clearing the air" which the first few days of a strike may have on the parties. All social interdependencies experience some degree of conflict or tension in their relations which can build up over time. The strike to some extent stands as an institutionalized safety valve which serves both the parties, and the preservation of the system. As Hameed explains it:

"If no built-in mechanism for a periodic release of emotions exists, conflict would seep to the foundation of the system and, in course of time, would culminate in what Marx would call antithesis...institutionalized industrial disputes...ensure the release of emotions for the continuation of the capitalistic system."³³

If, in general, the costs to the parties of a strike outweigh the benefits which can be gained then the question becomes why are strikes called and why are they (or are they) inevitable? The next section examines these questions and the curious contradiction inherent in the strike device that it can only be optimally efficient when it is not actually employed.

THE INEVITABILITY OF STRIKES

That strikes may be integral to the collective bargaining process does not necessitate the conclusion that they are inevitable. Ideally, when the strike-threat system is operating effectively there ought not to be any strikes. That is, in terms of the theoretical models, so long as the strike-threat remains a more costly alternative than compromise then rationally there should not be strikes. The key word here is "rationally". So far this analysis has proceeded on two premises which are subject to question. First, it has been assumed that the issues and decisions are solely based in (or can be reduced to) economic terms and that the strike is unfailingly the more costly alternative. Clearly there are many non-economic issues in negotiations which are difficult if not impossible to estimate in cost terms relative to that of a strike. Second, it has been assumed that all such decisions will be made rationally in light of the economic facts. The "fact" of strike cost itself is highly uncertain in light of the unknown duration, but even more significant is that expecting human interactions, such as in negotiations, to be purely rational is in itself irrational. It cannot be denied that there have been, and will be, "human" causes of strikes ranging from union politics to personality conflicts, employer attitudes, and historical relationships.³⁴ It can be said that strikes caused by irrational or mistaken decisions and those due to human relations breakdowns are as inevitable as human nature itself. Rectification of such defects in the system may well be an impossible dream.

Whether from economic causes or otherwise strikes have been viewed as inevitable since the process of collective bargaining originated. The Webbs noted this as follows:

"These cessations of work are, in our view, necessarily incidental to all commercial bargaining for the hire of labour, whether individual or collective, just as the customer's walking out of the shop, if he does not consent to the shopkeeper's price, is incidental to retail trade...so long as the parties to a bargain are free to agree or not to agree, it is inevitable that, human nature being as it is, there should now and again come a deadlock, leading to that trial of strength and endurance which lies beyond all bargaining. We know of no device for avoiding this trial of strength except a deliberate decision of³⁵ the community expressed in legislative enactment."

The preponderance of contemporary labour scholars and practitioners also adhere to the conclusion that so long as collective bargaining, in the present adversarial context, is allowed to be freely practiced some level of strike activity is inevitable. If Australia is any indication, strikes may well be unpreventable even where they are not recognized in the legal framework of the labour relations system. Another argument to the inevitability proposition can be illustrated by an analogy of negotiations to a poker game. Occasionally a player is forced to call what he believes to be a bluff, it is a difficult decision since he must gamble that the other is not in a position to back up his bids. If wrong and the call is met by a royal flush the next time he will be more likely to fold. Similarly the union may occasionally be called and it must then actualize the strike threat, not only to settle the current round of negotiations, but also to intimidate future concessions by the memory of the cost of the previous call. Failure to carry through with the strike threat would have a disastrous effect on the union's bargaining power.

In terms of Pen's bargaining model, without occasional use of the strike weapon management's estimate of the cost-risk of disagreement would decline by virtue of the fact that the probability factor of the cost being experienced (ρ) will have declined. Hence the "pressure" to compromise

decreases along with the union's bargaining power. Settlement would be inhibited until such time as the estimated cost of conflict again became disproportionate to the cost of compromise. That would best be achieved by the union through actual utilization of the strike which restores a higher probability factor (~~com~~).

Having touched upon some of the non-economic or human relations causes of labour strikes in this section justification ought to be given for not considering them further in this thesis, and for continuing to analyze the strike decision in terms of monetary issues only. One argument for this approach is that it provides the simplest system through which to explain and understand the process of bargaining and that there already exists a number of operative theories and a wealth of source material with which to work. A second reason is that the more subjective human relations causes of labour strife are much too complex to be considered here. Further, the "solutions" which derive from analysis of such causes are of limited operational value in the more pragmatic sense since they are often subject-specific (ie. to the parties which have been studied) and therefore of questionable policy value in such a diverse and chronologically dynamic setting as the Alberta labour scene. Thirdly, it is to be noted that the monetary issues are in fact by far the most prevalent cause of labour strife in this province.³⁶ And finally, it is the cost decision aspect of strikes which is the basis of the proposition of this thesis. The proposal for rejuvenation of labour strike effectiveness centers around restoration of strike cost impact on the parties thereby overbalancing the estimated cost of conflict and increasing the pressure to compromise.

SUMMARY

This Chapter has looked at the bargaining models of Chamberlain, Pen, Stevens, and Mabry in order to develop insights into the concept of collective bargaining. It was noted that in each of these models the motivating force in compromise offers and demands results from the cost of disagreement being disproportionate to the lesser cost of agreement. This contributed to the conclusion that the role of the strike in the collective bargaining process is to ensure the perceived cost of refusal to compromise is greater than that of compromise and thereby coerce agreement. That led to the argument that the strike is integral to an optimally effective bargaining system. Despite the fact that both parties are well aware that the cost of a strike will in all likelihood outweigh any benefits derived therefrom, it is also argued that a certain level of strike activity is inevitable and is necessary to maintain effective operation of the strike-threat system and therefore the collective bargaining process. It is not, however, argued that collective bargaining cannot possibly function without the strike, but rather that it functions most efficiently with it.

Chapter Three will look at the current legal provisions for strikes in Alberta in order to set a basis for the legislative revision proposal which is suggested later.

FOOTNOTES

CHAPTER II - THE ROLE OF STRIKES IN COLLECTIVE BARGAINING

1. Note has been taken of Joseph's warning that the difficulty faced in discussing the concept of bargaining is that there are a number of alternate meanings as to what it stands for. See Joseph, Myron L., "The Concept of Collective Bargaining in Industrial Relations", Industrial Relations Research Association, Proceedings of the Eighteenth Annual Winter Meeting - 1965, (December 1965), p. 183.

2. Webb, Sidney, and Webb, Beatrice, Industrial Democracy, p. 273. The Webbs claim the term "collective bargaining" was first coined by Beatrice (then Beatrice Potter) in her work "The Cooperative Movement in Britain", (London 1891, p. 217).

3. Davey, Harold W., Contemporary Collective Bargaining, p. 2; and, Casselman, P.H., Labor Dictionary, p. 62.

4. For example, Walton, Richard E., and McKersie, Robert B., A Behavioral Theory of Labor Negotiations, (1965). Here the authors view collective bargaining as "a deliberate interaction of two or more complex social units which are attempting to define or redefine the terms of their interdependence".

5. For example, Fellner, William, "Prices and Wages Under Bilateral Monopoly", Quarterly Journal of Economics, Vol. 61, No. 4 (August 1947), pp. 503-532 and particularly pp. 509-532.

6. There are classifications within the industrial relations theories of bargaining. Hameed distinguishes three "levels" of such theories as: 1) theories of the labour movement: John R. Commons, Selig Perlman, Frank Tannenbaum etc.; 2) theories of collective bargaining: Neil W. Chamberlain, Joseph Shister, Reed Tripp etc.; and 3) theories of industrial relations: John T. Dunlop, Gerald G. Somers, Jack Barbash etc. Hameed then proposes a unified conceptual framework integrating all three levels. For purposes of this thesis only collective bargaining theories (the second level), and particularly those based on bargaining power, will be examined. See Hameed, S.M.A., "A Theory of Responsive Bargaining", Industrial Relations Research Association, Proceedings of the 1973 Spring Meeting, Vol. 24, No. 8 (May 1973), pp. 550-558.

7. Chamberlain, Neil W., Collective Bargaining, (1951), pp. 220-221. Note Chamberlain provided three theories of collective bargaining in Chapter 6 which is entitled "The Nature of the Bargaining Process". At page 121 he describes these as: 1) a means of contracting for the sale of labour (The Marketing Theory); 2) a form of industrial government (The Governmental Theory); and 3) a method of management (The Managerial Theory).

Only the bargaining power aspect of the first theory - The Marketing Theory - is considered here. Chapter 10 (pp. 213-238) is the relevant section on Bargaining Power.

8. Pen, J., "A General Theory of Bargaining", American Economic Review, Vol. 42, No. 1 (March 1952), pp. 24-42, particularly pp. 36-39. A restatement of this model may be found in Pen, J., The Wage Rate Under Collective Bargaining, (1959), pp. 136-138.

9. Stevens, Carl M., Strategy and Collective Bargaining Negotiation, (1963), pp. 15-18, 19-24. The game theory analysis which follows Chapter 2 has not been included in the outline presented here since the concern was solely in relation to Steven's conflict-choice model of the actual negotiation process. Appendix 1 (pp. 147-151) contrasts the Pen and Stevens theories.

10. Mabry, Bevars D., "The Pure Theory of Bargaining", Industrial and Labor Relations Review, Vol. 18, No. 4 (July 1965), pp. 479-502. This article has been slightly redrafted to form Chapters 9 and 10 of Mabry's book. Chapter 10 (pp. 227-234) contains a review of the three models presented above, which are in part synthesized into Mabry's own model. The review is very concise and was helpful to develop the precis of the models which are presented here. See Mabry, Bevars D., Labor Relations and Collective Bargaining, (1966).

11. Stevens, op cit. (see note 9), p. 15, (brackets added).

12. Ibid., p. 12.

13. Mabry, op cit. (see note 10). See pp. 488-492 in the periodical article or pp. 218-225 in the book referred to above for a description of the economic transformation of his bargaining model.

14. Hameed, S.M.A., "A Theory of Collective Bargaining". Relations Industrielles, Vol. 25, No. 3 (August 1970), pp. 531-550.

15. Ibid., p. 538.

16. Ibid., pp. 544-546.

17. See Chapter One, page 3.

18. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Labour Relations, (1968), p. 33, para. 106.

19. Ibid., p. 16, para. 566.

20. Ibid., p. 119, para. 392.

21. For example, Anderson, J.C., "Why Should Strikes Continue to be the Final Test of Strength", Labour Gazette, Vol. 74, No. 5 (May 1974), p. 326-330.

22. It is noted that there are legal provisions which require "good-faith" bargaining, as for example are contained in The Alberta Labour Act, 1973, S.A. 1973, c. 33, s. 94-(5), however it is argued that practical enforcement of such provisions is all but impossible. At any rate the legal aspects are not at issue in the argument being developed here. For a brief outline of the "Boulwareism" bargaining approach utilized by Lemuel Boulware of the General Electric Company see Weisenfeld, A., and Berkowitz, M., "A New Look in Collective Bargaining", Labor Law Journal, Vol. 6, No. 8, pp. 561-566; see also McMurry, Robert W., "War and Peace in Labor Relations", Harvard Business Review, Vol. 33, No. 6, pp. 48-60.

23. Baer, Walter E., Strikes: A Study of Conflict and How to Resolve It, (1975), p. 22.

24. Woods, op. cit. (see note 18), p. 120, para. 397.

25. Ibid., p. 176, para. 607.

26. See the notation in the forward of Wightman, W.H., On Strike: Manual for Employers, (1973).

27. This view is supported in Theiblot, Armand J., and Cowin, Ronald M., Welfare and Strikes, (1972), p. 24.

28. Chamberlain, Neil W., and Kuhn, James W., Collective Bargaining, (2nd edition - 1965), p. 391.

29. See Chapter One, page 9.

30. As reported in The Wall Street Journal, Thursday, October 21, 1976, p. 6.

31. Noted in Cahill, L., "Anatomy of a Strike", Labour Gazette, Vol. 75, No. 12 (December 1975), p. 911.

32. Finn's quotation appeared in the Toronto Star and was noted in "Forum", Labour Gazette, Vol. 75, No. 10 (October 1975), p. 732. Ed Finn is the Public Relations Director for the powerful Canadian Brotherhood of Railway, Transport and General Workers union.

33. Hameed, S.M.A., "A Theory of Strike Cost and Government Intervention Policy", Indian Journal of Industrial Relations, Vol. 7, No. 2 (October 1971), p. 165. See also Woods, op. cit. (see note 18), p. 120, para. 393.

34. For a discussion of such causes see Keiser, J. and Kelly, Kevin T., "Human Causes and Effects of Strikes", in Preston, Ronald H., ed., Perspectives on Strikes, (1975), pp. 66-81.

35. Webb, op. cit. (see note 2), pp. 220, 221.

36. In 1975, the last year for which the data is currently available, 73% (19/26) strikes in Alberta involving 100 or more workers were wholly or substantially caused by monetary issue impasse. For Canada as a

whole the figure was 61% (366/598) indicating that one might, at least superficially, conclude that monetary issues are a more significant cause of strikes in Alberta than the average elsewhere. Source: derived from the "List of Strikes and Lockouts in Canada, 1975", Strikes and Lockouts in Canada 1975-1975, Labour Canada, Catalogue No. L2-1/1975, pp. 139-224. The data presented covers only 26 of the 34 strikes recorded in Alberta in 1975, and only 598 of the 1171 strikes recorded in Canada for the year. The remaining strikes involved less than 100 workers and were not included in the data; nevertheless the approximate percentages are felt to be representative of the whole. Note that the non-monetary causes of strikes listed range from protest of worker suspension and refusal to cross picket lines to, somewhat incredibly, the 4,120 man-days lost over poor ambulance service provided by management (p. 176) and 2,430 man-days lost over lack of parking space (p. 202).

CHAPTER III

LEGAL PROVISIONS FOR STRIKES IN ALBERTA

JURISDICTIONAL AND HISTORICAL LEGISLATIVE BACKGROUND

It is not necessary to go into any great detail on the history of strike legislation for purposes here. Nevertheless, a brief outline of same will serve to enhance this survey of present provisions. Canada copied the basics of most of its early labour legislation from both the United Kingdom and the United States. In comparison to those two countries we were relatively late in industrialization and, consequently, unionization. As a result of this time lapse we were fortunate enough to be able to avoid many of the mistakes and much of the violence¹ which the United States and Great Britain experienced. Thus, in 1872 when this country experienced its first major strike (and the barrage of litigation and prosecution therefrom), the immediate reaction was to replicate English legislation which removed unions from the conspiracy in restraint of trade laws.²

As strike frequency increased so did the proliferation of labour legislation. At first it was ad hoc and aimed at specific industries such as mining and the railways.³ Later the focus broadened as a number of enumerated major industries were covered by the Industrial Disputes Investigation Act of 1907.⁴ This legislation, the brainchild of the then Deputy Minister of Labour, W.L. Mackenzie King, constituted the primary labour law of Canada until World War II.⁵ However, during the latter nineteenth and the early quarter of the twentieth century the great legal battles disputing jurisdictional authority over (inter alia) labour relations arose.

Under the British North America Act of 1867,⁶ Part VI, (Distribution of Powers) the residual authorities were given to the Parliament:

"s.91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and the House of Commons to make Laws for the Peace, Order, and good Government of Canada in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

However, s.92 continued:

"In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, -

- ... (13) Property and Civil Rights in the Province
- ... (14) Administration of Justice in the Province

The "P.O.G.G. v. P.C.R."⁷ litigation was effectively settled in 1925 by the Judicial Committee of the Privy Council when it ruled in Toronto Electric Commissioners v. Snider⁸ that labour relations was indeed a provincial authority within each of the nine jurisdictions.

Notwithstanding the significance of the Privy Council decision in the Snider case, little changed in the practical sense. Parliament amended the Industrial Disputes Investigation Act to limit its application to those matters not within the jurisdiction of the provinces, but thereafter all provinces save Prince Edward Island enacted enabling legislation which adopted and applied the federal statute.⁹ The economic insecurities and pressures of the Great Depression illuminated many deficiencies in the prevailing legislation, particularly in respect to the absence of a definite right to union membership and the lack of compulsion for an employer to bargain. In 1937 the Trades and Labour Congress drafted a statute, based on the American Wagner Act, which it lobbied in the various legislatures. By 1939 six provinces had adopted at least the union rights provisions.¹⁰

World War Two Developments

When the Second World War erupted the federal government used emergency powers to reassert authority over all industries which supplied the war effort. By 1944 the fragmented Orders-in-Council, which were issued on an ad hoc basis to deal with various labour relations issues, were consolidated into the Wartime Labour Relations Regulations (P.C. 1003). Several provinces then adopted these provisions to cover industries not falling under the federal regulations which operated within their respective jurisdictions.¹¹ P.C. 1003 was a hybrid which contained aspects of both the Canadian conciliation intervention policy and the Wagner Act. Having been empowered under wartime measures its authorities were unconstitutional in peacetime (vis-a-vis the Snider case). In 1948, some three years after the war had ended, P.C. 1003 was repealed and its principles incorporated into the Industrial Relations and Disputes Investigation Act.¹² Clearly the Dominion government would have liked to continue usurping provincial jurisdiction over labour relations. However, the major provinces insisted, with the Snider case in hand, that such matters be returned to the legislatures. In 1950 the Supreme Court of Canada, in Attorney General of Nova Scotia v. Attorney General of Canada, ruled that it would be ultra vires for legislatures to even delegate labour relations jurisdiction to the Parliament, thereby destroying any hopes of federalists for a single national labour act.

Present Statutes

In a like pattern to that of the 1925 legislatures after the Snider case, following the passage of the Industrial Relations Disputes Investigation Act (and in light of the A.G. of Nova Scotia case) most of the provinces, including Alberta, brought their labour legislation in line

with that of the Dominion.¹⁴ Thus, by 1950, the provinces exhibited a high degree of uniformity in labour legislation. However, over the past twenty-seven or so years a not entirely insignificant degree of differentiation has taken place and one must now be cautious in comparing and contrasting statute and case law between provinces. In Alberta, The Alberta Labour Act, 1973¹⁵ (hereinafter referred to as the A.L.A.) is the pertinent legislation with respect to the private sector. The very recent and controversial Public Service Employee Relations Act¹⁶ (hereinafter referred to as P.S.E.R.A.), assented to May 18, 1977 and proclaimed as law September 22, 1977,¹⁷ which replaced the Crown Agencies Employee Relations Act¹⁸ (hereinafter referred to as the C.A.E.R.A.), is now the relevant legislation in the public sector. A number of the recommendations from the Woods Report¹⁹ have been incorporated in the major legislative revision of the Dominion statutory labour provisions that resulted in the Canada Labour Code²⁰ which replaced the 1948 Industrial Relations Disputes Investigation Act as of July 1971.²¹ This labour code covers private industries falling under federal jurisdiction in Alberta. The Public Service Staff Relations Act²² covers all federal civil servants²³ working in the province.

Federal/Provincial Jurisdictional Boundaries

It remains to delineate where the limits of the federal and provincial jurisdictions lie. Clearly in the public sector the Dominion government has authority over its employees and the employees of its agents; likewise with the Crown in the Right of Alberta. The line is relatively clear cut and causes few problems. However, in the private sector the issue is not so plain. Section 108 of the Canada Labour Code states that Part V (Industrial Relations) applies to any "federal work, undertaking or business" and to some federal Crown corporations. Section 2 thereof (Inter-

pretation) states that "federal work, undertaking or business" means any work within the legislative authority of the Parliament of Canada including: navigation and shipping; railways, canals and telegraphs; ferries; aircraft transportation; radio and television broadcasting; banks; and, the catch-all of "work declared to be for the benefit of two or more provinces". This latter phrase is almost verbatim that which appears in the British North America Act in the distribution of legislative powers sections.²⁴ Woods suggests that recent constitutional judgments are broadening the scope of the federal authority in labour relations through the provisions of s. 91 (29) (as it relates to s.92 (10)) of the confederation statute and hints that exclusive federal jurisdiction, or at least a much larger role for Parliament, is desirable.²⁵

Whatever the aspirations or future for federal labour jurisdiction, in reality, at the present time, the Dominion controls a relatively small proportion of labour relations activity in the private sector in Alberta. The A.L.A. s.2²⁶ states that it applies to all employers and employees within its legislative jurisdiction save those covered by the public sector provisions (the P.S.E.R.A.). Under Part IV (Labour Relations) certain managerial and confidential-capacity staff, as well as those in the medical, dental, architectural, engineering or legal professions, are also excluded.²⁷ In short, save those few industries enumerated above as federal, the A.L.A. covers the vast majority of private sector employees in the province. Thus, in light of marginal utility, the Alberta focus of this thesis, and space constraints, the Canada Labour Code will not be discussed further here. The notes on private sector strike legislation which follow are limited to that outlined in the A.L.A.

PRIVATE SECTOR LEGISLATION

The Alberta Labour Act, 1973 is the contemporary culmination of a long series of labour relations statutes. Professor Stuart Jamieson has noted that Canadian labour policy "has shown from the beginning a marked preoccupation with attempting to settle disputes and prevent strikes".²⁸ This preoccupation, which is far from absent in the present A.L.A., is manifest in the multitude of provisions for conciliation, mediation and arbitration which dominate Canadian industrial relations statutes. Under the collective bargaining procedure set out in the A.L.A. it can take at least as many as 81 days (as outlined in s.104, 108, 109, 117, 120, 125), if both stages of conciliation are utilized, from the time negotiations begin (30-90 days preceding the date of expiry of the previous agreement - s.94) to the time when a strike first becomes a legal possibility. The A.L.A. also contains provisions (s.135-137) for the parties to opt, prior to commencement of negotiations, into a no-strike conciliation/arbitration route. That is, labour and management can voluntarily agree to resolve any impasse encountered in contract negotiations by resort to binding arbitration. This aspect will be discussed further later.²⁹

The predominance of conciliation provisions overshadows those set out in Division 9 (A.L.A.) to cover strikes, lockouts and picketing, although these latter sections are certainly of at least equal importance.

A strike is defined by the Act as:

"(i) a cessation of work, or (ii) a refusal to work, or (iii) a refusal to continue to work, by two or more employees acting in concert or in accordance with a common understanding for the purpose of compelling their employer or employers' organization to agree to terms or conditions of employment or to aid other employees to compel their employer or an employers' organization to accept terms or conditions of employment."³⁰

A strike cannot be legally called under the A.L.A. until: 1) 14 days have

elapsed from the time the Minister refers a copy of the conciliation (commissioner or board) report to the parties in the dispute (pursuant to s.120), or from the time the Minister notifies the parties he has accepted the advice of the conciliator that the parties decide whether to strike (pursuant to s.122); 2) an affirmative supervised strike vote has been held (pursuant to s.123); and 3) 48 hours (two working days) written notice of the intention to strike has been given to the employer.³¹

In the volatile and fragmented construction industry special provisions have been made to aid multi-employer and regional bargaining through a system of registered employers' associations.³² When such an organization (whether "registered" or not) is the management representative to negotiations the bargaining agent (ie. the union) must strike all the members thereof simultaneously. Where the employers' association is a registered organization under the Act the individual members cannot break rank and settle separately until 60 days have elapsed from the time the strike commenced. Where, however, it is not a registered association (ie. not falling under the special construction industry provisions) the bargaining agent is free to settle with any individual employer at any time after the strike begins.³³ All such agreements are, however, only interim until such time as the master agreement is settled (s.129 (2)).

The right to commence strike action lasts for one year from the date the right originally arose (s.130) - ie. when all three of the stipulations under s.126 have been met (see above). Once a strike has been legally called the union has the right to set up pickets and attempt to dissuade others from entering the employer's premises, dealing with or handling the employer's goods or products, or otherwise doing business with the company so long as the persuasive activities are done peacefully

and "without acts which are otherwise unlawful" (s.134 (1)). After setting out these provisions covering the right to picket a struck employer the sections on strike action end. There are no further stipulations to promote settlement of a legal "normal"³⁴ dispute once it has begun. This, it is suggested, is the failing point of the present legislation, and is the subject to which the proposal to be made herein is directed.

There are, of course, further provisions for handling strike situations which are deemed to constitute an "emergency" - ie. a danger to health or property or "unreasonable hardship" on persons not party to the dispute (s.163).³⁵ These provisions, once invoked by the Cabinet (Lieutenant Governor in Council), render a previously lawful strike illegal (s.163 (3),(5)). This forces the workers back to work pending the binding award of a "Public Emergency Tribunal" (s.165) which will arbitrate the disputed issues and render the collective agreement under which the employees will work for the next year or more. The capriciousness, or at least the perceived capriciousness, of the invocation of these emergency provisions render them highly contentious with the labour movement (as was illustrated by the recent march on the Legislature by hundreds of Alberta nurses after Labour Minister Neil Crawford ordered them back to work under s.163³⁶). Stage two of the proposal of this thesis, a cost/benefit based direct government intervention policy, is aimed at minimizing labour's antipathy towards back-to-work orders in emergency disputes.

THE PUBLIC SECTOR

The public sector has experienced a virtual mushrooming of unionization in the last decade at all three levels. The growth has been so great that the Canadian Union of Public Employees (consisting mostly of municipal employees) is now the largest union in the Canadian Labour Congress

with some 210,000 members. The Public Service Alliance of Canada (federal government employees) rates number three with 140,000 members; and the recently formed National Union of Provincial Government Employees is number five with roughly 100,000 members.³⁷ The consequent occasional (and, it is argued, inevitable) strikes have prompted much debate over whether public employees ought to have the right to strike.³⁸ The legal provisions for, or banning, strikes in each of the three levels of the public sector in Alberta will be dealt with separately here.

Federal Provisions

Federal government employees, numbering approximately 31,480 in Alberta,³⁹ are covered, as previously mentioned, by the Public Service Staff Relations Act⁴⁰ (with the exception of those in the armed forces, Royal Canadian Mounted Police, and those covered by the Canada Labour Code such as, for example, employees of the Canadian National Railway, Air Canada, and the Canadian Broadcasting Corporation). A separate tripartite board has been constituted (the Public Service Staff Relations Board) specifically to deal with the collective bargaining arrangements under the Act. An independent "Pay Research Bureau" gathers the latest wage and benefit statistics which both parties use at the bargaining table. Each bargaining unit has a choice between two impasse resolution mechanisms (s.36-38,59): 1) the conciliation/strike route (s.77-89); or, 2) the conciliation/binding arbitration option (s.63-76). The choice can be altered from collective agreement to collective agreement, but cannot be changed once negotiations for a given agreement commence.⁴¹ Noteworthy is that the interest arbitration tribunal has a permanent chairman and bifunctional representative panels.

If the conciliation/strike route is chosen a system of "Designated

employees" (s.79) ensures emergency service (ie. minimal skeleton staff in essential services) thereby protecting the "safety and security" of the public.⁴² Employees are only forbidden to strike if: 1) a designated employee; 2) not in a Board certified bargaining unit; 3) in a bargaining unit which has opted for the arbitration mechanism; 4) covered by a collective agreement still in effect; or, 5) the conciliation report is not yet in. Otherwise, once the procedures have been correctly followed and proper notice given, workers are free to take private sector-type strike action to back-up their contract demands (s.101-105). So far, the only major strikes under this Act to have direct and significant effect on Albertans have been those by the "inside workers" of Canada Post.

Provincial Provisions

Provincial employees represent about 45,933⁴³ of the Alberta work force of which some 35,000 are members of the Alberta Union of Public Employees (formerly the Civil Service Association of Alberta) which is the bargaining agent for this province's civil servants. As noted above the legislation affecting these employees has just recently been changed and The Public Service Employee Relations Act (S.A. 1977, c.40) has replaced the old Crown Agencies Employee Relations Act (R.S.A. 1970, c.79). The Public Service Act (R.S.A. 1970, c.298; hereinafter referred to as the P.S.A.) which also, although to a much lesser extent, affects provincial employee collective bargaining has been retained, mutatis mutandis,⁴⁵ in conjunction with the P.S.E.R.A.

The key aspect of Alberta provincial employee labour relations which distinguishes them from those of other levels within the public sector in the province, those in the private sector, and even counterparts in six of the other nine provinces,⁴⁶ is that provincial employees are forbidden

to strike. The P.S.A. does not even contain the word "strike" within its clauses. The P.S.E.R.A. states at s.93 that:

- "(1) No person shall cause or attempt to cause a strike by the persons to whom this Act applies.
- (2) No person to whom this Act applies shall strike or consent to a strike."

Section 95 puts anyone who contravenes s.93 (1) (ie. anyone who instigates a strike) in jeopardy of a summary offense conviction and fines up to \$10,000.00.

The P.S.E.R.A. (s.46-60) sets out a mediation/compulsory binding arbitration process as the ultimate impasse resolution mechanism. Further, it prohibits arbitral awards from dealing with job assignment and organization, manpower allocation, employee evaluation, selection and promotion, training, transfers, or pensions (s.48 (2)). The guidelines for the arbitration board, first added to the C.A.E.R.A. as s.12.1 (S.A. 1972, c.26 s.8) and retained in the P.S.E.R.A. as s.55, state that "in the conduct of proceedings before it an arbitration board shall consider "first" (a) the interests of the public". Section 59 of the P.S.E.R.A. provides that the arbitral award is to be incorporated into the terms of the collective agreement by the parties (and if either party refuses to participate in the preparation of the collective agreement draft the other may complete it alone). Section 60 states that the resultant contract, once certified as giving effect to its award by the arbitration board, "shall" be signed, and if not signed within 10 days of said "certification" is deemed to have been signed, and thereafter is binding on the parties (and consequently the employees).

Municipal Provisions

Municipal employees, although part of the public sector, generally fall under the purview of the A.L.A.⁴⁷ and thus, in light of the presentation

of the provisions thereof above, little more need be said here. There are however two units of city employees who are covered by special legislation. The police and fire departments' collective bargaining is covered by The Firefighters and Policeman Labour Relations Act (R.S.A. 1970, c.143, as amend.). The services of these two departments are considered so essential as to warrant singular attention. The relevant attributes of this Act to be noted for purposes here are again that strike action has been banned (s.4) and a mediation/arbitration mechanism substituted therefore (s.9-15). The private sector system of industrial relations which covers the bulk of municipal public servants appears to have adapted fairly well to the peculiarities and differences encountered in the municipal segment of the public sector. In recent terms, the only really serious inconvenience caused to the Alberta public at large appears to have been the Edmonton Transit workers' walkout in late 1973 through to January 1974 (although a Calgary garbage collectors' strike a few years back raised a flurry) and even it did not cause the uproar heard when Alberta Liquor Control Board employees staged a work stoppage (illegally) a few months later.

EQUITY VERSUS ESSENTIALITY

The deification of democratic principles by the preponderance of the Legislature's politicians and mandarins, the free enterprisers, and the Alberta public at large, poses a somewhat embarrassing and awkward hypocrisy to the present policy of statutory ban on certain public employee strikes. The very nexus between collective bargaining and the democratic free market system is the right, as the Webbs put it, to walk out of the shop if the shopkeeper's price is not acceptable.⁴⁸ Further, the principles of democracy, as first guaranteed by the Magna Carta sealed in 1215 by King John and enhanced under the Commonwealth of Oliver Cromwell, state

that under English law (received in Alberta as it stood July 15, 1870⁴⁹) all men are to be equal. If one accepts the corollary to this, that there is only to be one law for all men in the society, it is difficult to philosophically justify the strike-ban to which only a certain segment of Alberta's workers are subjected.

The issue can be reduced to a basic conflict between equity and essentiality. Equity is a concept in the law which is largely elusive and has defied singular conceptualization by students of jurisprudence for the centuries since Aristotle. Equity can be argued as the basis for both stands in this issue. The distinction being drawn between certain public employees and the remaining workers in the province can certainly be said to be inequitable. However, so can it be said that it would be inequitable to allow the public to be forced to risk and suffer the possible grave consequences of an essential service shut down merely so that a few can more forcefully demand better compensation for their services.

The Task Force on Provincial Public Service Labour Relations which was formed in February 1975 as a bilateral commission to recommend revisions for what is now the P.S.E.R.A. was split in its report tabled in the legislature in November 1976. The union representatives proposed that provincial employees be brought under the A.L.A. - a position which has been lobbied by the A.U.P.E. for some time. The P.S.E.R.A. (especially s.60 and s.93) leaves little doubt as to whose recommendations were accepted. If one considers the interests of the government management as closely aligned with those of the public in civil servant remuneration negotiation (ie. minimize the cost), then s.55 of the P.S.E.R.A. (as noted above) might well be construed as instructing the arbitration board to consider the interests of management the first priority. A.U.P.E. officials now use

every public opportunity to mock the essentiality argument through comparison of their members' functions with those of employees under the A.L.A. Why, they ask, is a plumber for "Joe's Plumbing Shop", a teacher for the Calgary Public School Board, a computer programmer for Imperial Oil, or a nurse for the Royal Alexandra Hospital any less essential than a plumber for the Treasury Board, a teacher at S.A.I.T., a computer programmer for the A.L.C.B., or a nurse for the University of Alberta Hospital? Government officials are often hard put to answer. The A.U.P.E. recently reported to its members that when Mr. John Gogo (M.L.A. Lethbridge West) was asked why employees of Alberta Government Telephones should work under the A.L.A., when Alberta Liquor Control Board employees must work under special legislation he replied that the sale of liquor is an essential service, so these employees must not have the right to strike.⁵⁰

Philosophically the equity v. essentiality issue is irresolvable; practically, it has been resolved by the provisions of the P.S.E.R.A. The A.U.P.E. has stepped up its campaign to pressure the government for the right to strike (witness the full page ad recently placed in the Province's major newspapers which declared in three inch letters that provincial employees are being denied the basic right of equality contra the Alberta Bill of Rights⁵¹), but for the foreseeable future it can be expected that essentiality will continue to override universalism and the equity therein. It must be noted however that a statutory strike ban cannot preclude the occasional dehiscence of emotions in the form of illegal strikes. In the sobering practicality of the words of Carey McWilliams "...there is no way to keep workers from strike if they want to strike, and by the same token, no way to force them back to work".⁵²

IN-TERM AND ILLEGAL STRIKES

In-term strikes, those which occur during the term of the agreement, have been on the rise in recent years.⁵³ In the five Canadian jurisdictions which permit inclusion of "zipper clauses" providing for renegotiation of the contract before expiration some of these strikes are legal.⁵⁴ For those few employees in Alberta falling under the Canada Labour Code there are limited provisions for in-term strikes over technological change disputes only (s.149-152). For all other employees in Alberta any strike during the term of a collective agreement is illegal. In terms of the A.L.A. (s.132) an illegal strike is any strike (defined by s.49 (1) (1) as quoted above) where: 1) the necessary steps conditional to a legal strike⁵⁵ have not been fulfilled; or, 2) a collective agreement is in force.⁵⁶ Since strikes are absolutely prohibited by the P.S.E.R.A. (s.93) any strike by employees covered thereunder is illegal.

Major illegal walkouts, such as the Quebec "Common Front" action of 1972, are usually handled quickly through ad hoc legislation.⁵⁷ Unions advocating such unlawful activity can be placed under trusteeship and leaders jailed if in contempt of a labour board cease and desist order⁵⁸ (eg. A.L.A. s.133 (3)(4)). However, in the majority of instances a court interlocutory injunction or board order is sufficient to halt an illegal strike; Alberta unions have been very law-abiding in this respect to date.

Wildcat strikes are certainly no less expensive than their legal counterparts,⁵⁹ and there has recently begun a trend to sue unions for such actions, claiming, in some cases, million dollar plus damages.⁶⁰ An American local of the Teamsters Union was recently assessed \$3.1 million in damages for a 1970 illegal strike;⁶¹ previously another local had been assessed \$5.9 million related to the same series of unlawful stoppages (it

has begun bankruptcy proceedings).⁶² At least \$17 million in further claims have also been filed against that union for such actions.⁶³ In Canada, although some courts have entertained breach of contract actions per se against unions,⁶⁴ the peculiar legal personality of the union (eg. A.L.A. s.58(a)) requires that suits be brought on the more difficult ground of breach of the provisions of the labour Act.⁶⁵ There has also developed a body of case law of "industrial torts" which parallel some of those in the general common law. These "torts" include: 1) the tort of inducing breach of collective agreement; 2) the tort of conspiracy to injure; 3) the tort of interfering with favourable business relations; and 4) the tort of intimidation.⁶⁶ In the long run the resort to the courts to hold unions legally responsible for damages suffered as the result of an illegal strike may well be the most effective means of dealing with those who choose to ignore the compulsory rights arbitration provisions (eg. A.L.A. s.138-148; P.S.E.R.A. s.61-69) and strike during the term of a collective agreement. There are also the penalty provisions of the Acts to make such activity a less desirable approach (eg. A.L.A. s.169; P.S.E.R.A. s.95). Punitive sanctions for illegal strikes ought not to be included under the fine scheme herein proposed as such amounts, in some measure, to an institutionalizing or legitimization of same. The solution to reducing illegal strike activity offered here is complete persona standi in judicio before the courts in such matters for unions, and more liberal application of the penalties prescribed under the Acts.

SUMMARY

To summarize, it has been found that in the Alberta private sector strikes are permitted so long as stipulated conciliation and notice procedures have been complied with. In the federal public sector employees have

a choice of a conciliation/strike route with designated employees or a conciliation/arbitration mechanism for final impasse resolution. Alberta civil servants are prohibited from strike action of any sort and must submit all disputes to compulsory binding arbitration. Municipal employees in the province, with the exception of fire and policemen who are also subject to compulsory arbitration, fall under the A.L.A. and consequently have the same strike rights as workers in the private sector. In Alberta all strikes occurring during the term of a collective agreement (save certain of those under the Canada Labour Code concerning technological change) are illegal, subjecting both union and membership to liability for statutory fines and damage suits.

Given these legal provisions for strikes in Alberta, Chapter Four now looks at the incidence of strike activity.

FOOTNOTES

CHAPTER III - LEGAL PROVISIONS FOR STRIKES IN ALBERTA

1. With the exception of the Winnipeg General Strike of 1919 and a relatively few other minor incidences, Canada has had a comparatively bloodshed free labour history. We do not have a martyred Joe Hill, or even, more recently, a Saul Alinsky such as led the unionization battles in the United States. Aside from slight influences in the British Columbia mining and forestry industries, there has also not been much violence oriented unionism such as were the Molly McGuires. For a review of Canadian labour conflict see Jamieson, Stuart M., Times of Trouble - Labour Unrest and Industrial Conflict in Canada 1900-66, Task Force on Labour Relations Study No. 22, 1966.

2. The Canadian Trade Unions Act (1872), 35 Vict. c.30. Note this only applied to "registered" trade unions. The Act was an almost exact duplicate of the English Trade Union Act (1871) (34 and 35 Vict. c.31) which was proclaimed in the United Kingdom the year previous. The Canadian Criminal Law Amendment Act (35 Vict. c.31) of 1872 also copied a then recent English Act of the same name to permit peaceful picketing; this now forms s.381 (2) of the present revision of the Canadian Criminal Code, R.S.C. 1970, c.C-34. The 1892 criminal law codification (55 and 56 Vict. c.29 (Can.)) removed the conspiracy charge possibility from all unions, registered or not. Under present provisions of the Criminal Code a union is not a conspiracy in restraint of trade in the criminal sense by virtue of s.424 (2) and s.425 (1), nor are its "reasonable" actions subject to Canadian anti-combines legislation (Combines Investigation Act, R.S.C. 1970, c.C-23, s.4). Further the provincial labour statutes have sought to release unions from civil conspiracy suits by providing that "a trade union and its acts shall not be deemed to be unlawful by reason only that one or more of its objects or purposes are in restraint of trade" (Alberta Labour Act, 1973, S.A. 1973, c.33, s.58 (2)).

3. For example, the Railway Labour Disputes Act, 1903, 3 Edw. VII, c.55.

4. S.C. 1907 (6 and 7 Edw. VII), c.20. The Act was mainly concerned with tripartite compulsory conciliation applied to disputes in mining, transportation, communications, and public utility industries, although its provisions were also made available to disputes in other industries provided both labour and management so requested. The Act also contained strike-ban provisions.

5. See Anton, F.R., The Role of Government in the Settlement of Industrial Disputes in Canada, (1962), p. 78.

6. 30 and 31 Vict. c.3 (U.K.).

7. P.O.G.G. stands for the Peace, Order and Good Government clause for federal residual powers (ie. s.91 cited in the text) and P.C.R. stands for the Property and Civil Rights jurisdiction of the provinces (s.92 (13)).

8. 1925 A.C. 396; 1925 2 D.L.R. 5 (P.C.). Note this was a per saltum appeal from the Ontario High Court which, as a result thereof, avoided the centralizing tendencies of the Supreme Court of Canada decisions in such disputes.

9. See Carrothers, A.W.R., Collective Bargaining Law in Canada, (1965), p. 41. See also Logan, John E., An Analysis of the Effects of Compulsory Conciliation in Canada on Collective Bargaining and Strikes, p. 44. Note that such action, ie. merely adopting federal legislation, was constitutionally questioned, but never tested in the courts. However, in light of the decision in Attorney General of Nova Scotia v. Attorney General of Canada, [1951] S.C.R. 31 (to be discussed shortly) these steps may well have been ultra vires.

10. See Muir, J.D., "Highlights in the Development of the Legal System", in Hameed, S.M.A., Canadian Industrial Relations, (1975), p. 100.

11. Ibid., p. 100.

12. S.C. 1948 (11 and 12 Geo. VI), c.54.

13. [1951] S.C.R. 31; [1950] 4 D.L.R. 369 (S.C.C.).

14. Muir, op. cit. (see note 10), p. 101.

15. S.A. 1973, c.33, as amend. S.A. 1974, c.18, c.38; 1974, c.60; 1976, c.40.

16. S.A. 1977, c.40.

17. See "Current Labour Developments, October 1977: Public Service Employee Rights Stamped in Alberta:", Impact, December 1977, p. 26, for the A.U.P.E. evaluation offered therein.

18. R.S.A. 1970, c.79, as amend. S.A. 1972, c.26; 1973, c.19; 1976, c.9.

19. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Labour Relations, (1968).

20. R.S.C. 1970, c.L-1, as amend. S.C. 1972, c.18.

21. Muir, op.cit. (see note 10), p. 102.

22. R.S.C. 1970, c.P-35, as amend. S.C. 1972, c.18; 1973-74, c.15.

23. Ibid., s.3.

24. Op. cit. (see note 6), s.92 (10) (c).

25. Woods, op. cit. (see note 18), p. 213, para. 764.

26. As amended by P.S.E.R.A., s.103.

27. A.L.A., s.49 (1) (h).

28. Jamieson, Stuart M., Industrial Relations in Canada, (1957), p. 102.

29. See Chapter Six, infra.

30. A.L.A., s.49 (1) (1).

31. A.L.A., s.125-126.

32. A.L.A., s.62-65; 82-90.

33. A.L.A., s.127 (2), (3), (4); 129.

34. See Chapter One, supra, p. 13 and footnote 27 thereto for the meaning as used here.

35. A.L.A., s.163 is being cited here as amended by S.A. 1975, c.60, s.23.

36. See the Edmonton Journal, Saturday, July 9, 1977, pp. 1,3.

37. Source: Labour Gazette, Vol. 76, No. 6, p. 370.

38. For an excellent example of the arguments placed both for and against the public sector right to strike see the articles by Arthur M. Kruger, Edward B. Krinsky, John F. Burton Jr., and Melvin K. Bers in Industrial Relations Research Association, Proceedings of the 1970 Spring Meeting, Vol. 21 (May 1970), pp. 455-495; see also Hart, Harold, editor, The Strike: For and Against, (1971), pp. 21-36, 121-146, 165-176, 179-192.

39. Source: Information Canada, Federal Government Employment (catalogue no. 72-004), Table II "General Government: Total Number of Employees by Province", p. 13. Figures are for December 1976, the latest data available at this writing.

40. R.S.C. 1970, c.P-35, s.3. The Act covers all non-managerial and non "confidential" civil servants as well as employees of The Atomic Energy Control Board, The Defence Research Board, The Economic Council of Canada, The Fisheries Research Board, The National Film Board, The National Research Council, and the various commissions.

41. It should be noted though that s.89 provides that the parties can mutually agree, before it is handed down, to make the conciliation award binding.

42. Kruger reports that, as of 1970, where designated employees have been required they amounted to an average of only 13.6% of the bargaining unit. See Kruger, Arthur M., "The Right to Strike in the Public Sector", Industrial Relations Research Institute, Proceedings of the 1970 Spring Meeting, Vol. 21 (May 1970), pp. 455-463 at p. 461.

43. Source: Information Canada, Provincial Government Employment (catalogue no. 72-007), "Summary of Salary Earners and Wage Earners... For The General Government Services", p. 6. Figures are for December 1976, the latest data available at this writing.

44. Source: Edmonton Journal, Tuesday, May 3, 1977, p. 51.

45. P.S.E.R.A., s.109 outlines the necessary revisions.

46. As noted by Mike Poulter (vice-president of A.U.P.E.) in Impact, March 1977, p. 11, in an article he entitled, after the famous quote, "The Law, Sir, Is an Ass". A brief survey of the respective relevant provincial statutes confirms his contention. ("Impact" is the A.U.P.E. newsletter.)

47. This research conclusion was confirmed by a phone interview with Mr. Ken Kreklewetz, a labour relations director for the City of Edmonton (Personnel Department) which took place Wednesday, July 13, 1977.

48. See the quotation in Chapter Two, p. 42; the citation there-to is in footnote 35 of that chapter.

49. The Northwest Territories Act, 1886, R.S.C. 1886 (43 Vict.), c.50, s.11 sets this out; these provisions are adopted under The Alberta Act, 1905, S.C. 1905 (4 and 5 Edw. VII), c.3, s.10.

50. Broad, T.W. (president of A.U.P.E.), "The View From Here", Impact, May 1977, p. 3.

51. For an example, see the Edmonton Journal, Tuesday, May 3, 1977, p. 51.

52. Quoted from his essay given in Hart, H., editor, The Strike: For and Against, (1971), p. 223. McWilliams is a noted American industrial relations student, an author, and, at the time, was the editor of the influential "The Nation".

53. Data on in-term strikes is very scarce since, being for the most part illegal and relatively short, they are rarely reported. A "Research Bulletin" put out by the Economics and Research Branch of Labour Canada in early 1975 (entitled "Work Stoppages-1974 Review") notes that in 1974 "...40% of all work stoppages took place while contracts were in effect, compared with about 20% in 1973. The Woods Report, op. cit. (see note 19), p. 131, para. 416, notes that even in 1966 about 27% of the strikes in Ontario were illegal. In a 1976 interview by the Board of Industrial Relations of Alberta, he estimated illegal strikes in this province amount to about 10-15% of total man-days lost.

54. A study by the author in the spring of 1976 revealed that six provinces - Newfoundland, Prince Edward Island, New Brunswick, Ontario, Alberta, and British Columbia - prohibit strikes during the term of a collective agreement; five jurisdictions - Nova Scotia, Quebec, Manitoba, Saskatchewan, and the Federal (Canada Labour Code) - contemplate the possibility of an in-term strike, although the Federal jurisdiction limits this to cases where proposed technological change is at issue. The study, which centered on the private sector, concluded that such provisions did not result in any abnormal increments in strike incidence (ie. statistically significant to a 99% confidence interval) since the date of enactment of same.

55. A.L.A., s.125-127.

56. A.L.A., s. 132 (1) (b); note the qualification in subsection two.

57. For example, Quebec's Bill 89 and Bill 19 (1971-72) took care of the "Common Front".

58. As, for example, was done with the International Union of Elevator Constructors (locals 89, 101) under Quebec Bill c.43 in 1974.

59. For example, the Iron Ore Company of Canada recently grieved to the Newfoundland labour board that an illegal strike by 400 United Steelworkers of America miners was costing it \$395,000.00 a day. See Edmonton Journal, "Canadian Digest", Monday, February 14, 1977, p. 12.

60. For example, Alcon Smelters and Chemicals Ltd. recently filed a \$1.3 million suit against the Canadian Association of Smelter and Allied Workers and three officials thereof for an 18 day wildcat strike at their Kitimat, B.C. aluminum smelter, see Edmonton Journal, Monday, January 3, 1977, p. 6; on February 27, 1976 the James Bay Energy Corporation filed one of the largest damages claims ever issued against a union. The \$32,625,514.00 suit was for the 1973 illegal strike and ransacking of the site at the James Bay hydro-electric project for which one leader, Yvon Duhamel, is currently serving a 10 year prison sentence; see Edmonton Journal, Saturday, February 28, 1976, p. 2.

61. Reported in The Wall Street Journal, Thursday, March 3, 1977, p. 28.

62. Reported in The Wall Street Journal, Monday, September 27, 1976, p. 14. The judge ruled the union could declare bankruptcy, see Wednesday, November 3, 1976, p. 3.

63. Reported in The Wall Street Journal, Friday, February 11, 1977, p. 4 (\$17 million suit was filed in St. Louis).

64. For example, Senkiv et. al. v. Utility Grove (1961) Ltd. (1967), 59 W.W.R. 350 (Man. C.A.).

65. For example, Perini Pacific Ltd. v. International Union of Operating Engineers (1961), 28 D.L.R. (2d) 727 (B.C.S.C.): Therien v.

International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers, Building Materials, Construction and Fuel Truck Drivers Union (1957), 6 D.L.R. (2d) 746 (S.C.C.); or, Patterson and Nanaimo Dry Cleaning and Laundry Workers Union (Local 1) v. Imperial Laundry Company, [1947] 2 W.W.R. 510 (B.C.C.A.). See also the write-up on this decision and its ramifications in Labour Gazette, Vol. 47, No. 9, pp. 1337-1339 and Vol. 47, No. 10, pp. 1500-1501 (the appeal).

66. Woods, op. cit. (see note 19), p. 178, paras. 614-619.

CHAPTER IV

THE INCIDENCE OF STRIKE ACTIVITY

STATISTICS AND OBSERVATIONS

Statistical analyses of a complex human relations based mechanism such as the strike offer, at best, somewhat limited insights into the phenomenon. Massive data studies by various authors culminating in literally volumes of output "proving" given correlations, cycles, and trends, etc. often result in diametrical conclusions; sometimes even when using the same data. In a tremendously detailed study on strike statistics by John Griffin in the United States (1939) it was concluded that:

"Over the last 58 years, the period for which statistics have been worked up, there stands out one dominant fact. This is that there is no dominant trend, there is no basis for forecasting, even though it is at the same time clearly evident that there is no justification, in the data at least, for the expectation that the number of strikes will tend to decline."

Nevertheless, the famous study of some thirteen western industrial countries (including Canada) by Ross and Hartman in the late 1950's concluded that the strike as an economic weapon was "withering away".²

A number of scholars have reported tests showing a close correlation (sometimes at a 99% confidence interval) between strike incidence and the business cycle - ie. the generalization that during a business upswing strike frequency increases and during a downswing strike frequency decreases.³ Others, however, deny that any such correlation exists and offer various alternative cyclical explanations and/or predictions.⁴ It is not intended here to engage in the cyclical versus non-cyclical debate, but

rather merely to illustrate the divergencies in conclusions which have been reached through statistical manipulations of similar data. The presentation to follow is an outline of the available data on strike incidence, with the addition of a few observations thereon. No attempt has been made, in light of the foregoing, to derive any prescriptive or predictive conclusions from these statistics.

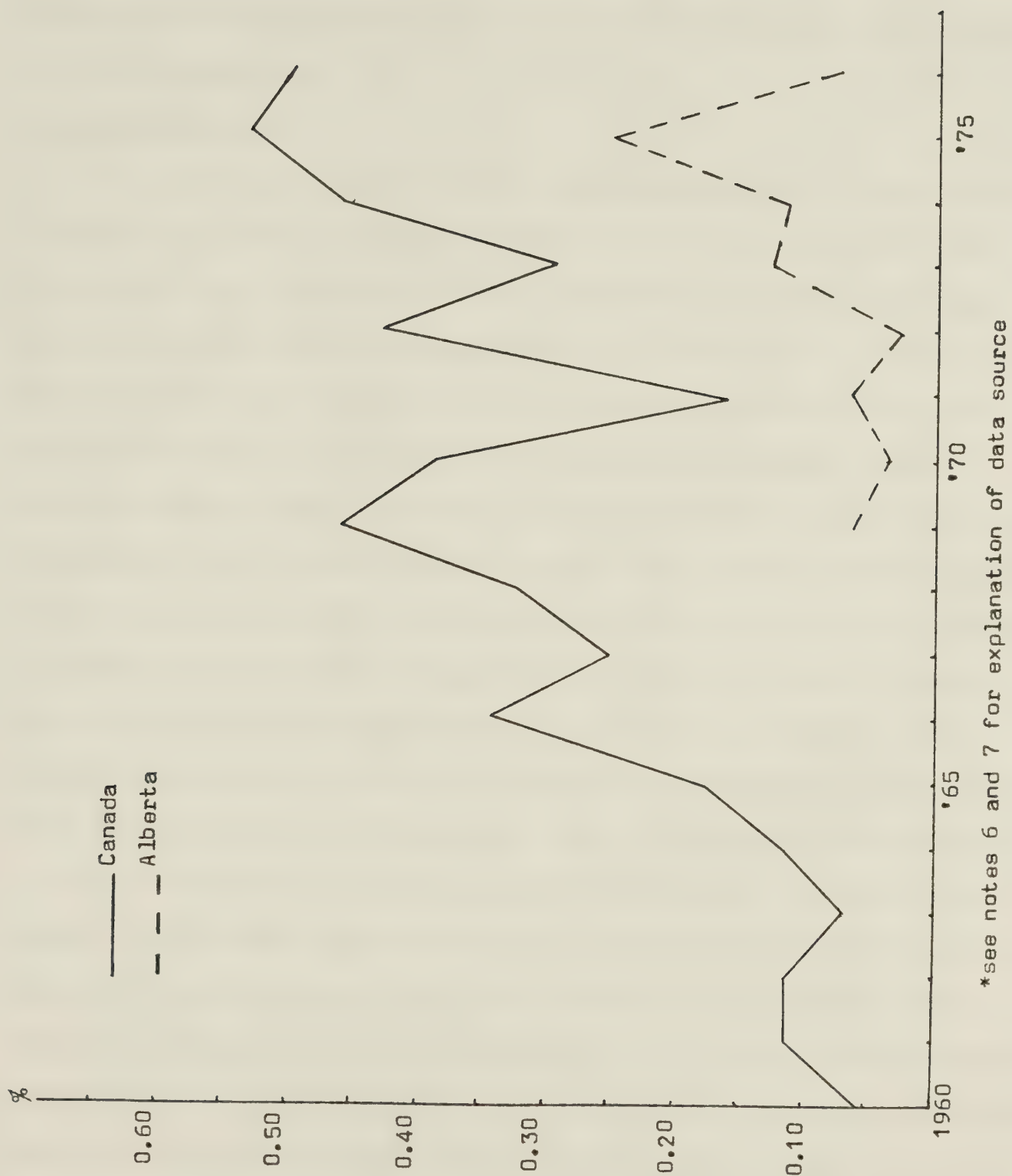
Overview Of Strike Statistics

Defining, for the moment, the "incidence" of strikes as the percentage of man-days lost to estimated working time per year,⁵ the solid line in figure 4-1 graphs the national average of strike incidence for the 1960-1976 period.⁶ The broken line in figure 4-1 plots the same data for Alberta from 1969 through 1976.⁷ Interestingly, the correlation in increasing and declining trends is, for the most part, negative. Appendix B is a composite of statistical tables on the annual number of strikes, man-days lost, man-days lost/strike, incremental strike mathematical sign changes, and incremental man-days lost mathematical sign changes by province for the 1960 through 1975 period. A study of these also reveals no consistent correlations, either between the provinces themselves, or between given provinces and the national average. This has significant implications for any policy proposals in that solutions for labour strife, therefore, may be, to some extent, jurisdictionally unique. Jamieson has also noted this:

"The main reason for this lack of correlation (with economic cycles) appears to be that industrial conflict in Canada has been primarily a regional phenomenon in most years since the turn of the century... Regional differences have been so pronounced in most years that "national patterns" of industrial conflict becomes an almost meaningless abstraction in some respects. In most years since 1900, for instance, strike behavior in most provinces have diverged more from the national average than the latter has from the United States and

FIGURE 4-1

STRIKE INCIDENCE: CANADA AND ALBERTA*



some other countries."⁸

He goes on to cite variations in resource endowments, industrial structures, occupational compositions, per capita incomes, and language and cultural make-up as well as decentralized unionism and provincial autonomy in labour relations as reasons for this divergence in strike incidence between the various jurisdictions.

Alberta Statistics

Focusing, in light of this divergence, solely on Alberta statistics, table 4-1 sets out the strike activity in this province from 1960 through the first six months of 1977.⁹ These figures include all legal private and public sector stoppages recorded in the period. 1960 to 1966 were relatively quiet years in Alberta, averaging only 5.9 strikes per year, 1128 workers involved and 22,234 man-days lost (roughly 0.02% of estimated working time). In 1968, two years after the Pearson settlement, Alberta suffered a record number of strikes (59), workers involved (2,030), and man-days lost (34,999). The situation quieted down from 1969 to 1972. In those years the averages dropped to 13.8 strikes per annum, although the man-days lost only dropped to an average per year of 51,975 with workers involved at a 3,309 annual average (the latter due in large to the 8,569 who participated in stoppages in 1971 - a bad year for school boards - which is the second highest for number of strikers in the years under study). 1973 to 1975 were the worst years for stoppages in Alberta, averaging 36.3 strikes per year (up roughly 164% over the 1969-1972 period average), 8,043 workers involved (up roughly 144% over the 1969-1972 period average), and an unprecedented 233,822 man-days lost (up roughly 350% over the 1969-1972 period average). These were the years of rampant inflation and serious demands for wage increases of 30% and more.

TABLE 4-1

LABOUR STRIKES IN ALBERTA, 1960-1977*

<u>Year</u>	<u>Number of Strikes</u>	<u>Workers Involved</u>	<u>Man-days Lost</u>
1960	5	1,684	27,160
1961	8	2,413	19,390
1962	9	1,073	21,300
1963	6	1,208	32,624
1964	2	73	4,273
1965	4	248	4,335
1966	7	1,201	46,556
1967	17	1,194	22,227
1968	59	2,030	54,999
1969	17	1,916	64,565
1970	11	1,788	38,660
1971	17	8,569	77,680
1972	10	964	26,996
1973	32	5,859	154,369
1974	44	7,717	166,940
1975	35	10,554	380,158
1976**	29	4,987	97,688
1977***	6	731	14,492

*see note 9 for explanation of data source

**1976 does not include data on the "Day of Protest"

***only includes data for the first six months of 1977.

1976 has shown a significant decline in the number of strikes in Alberta and a tremendous decrease in the number of man-days lost. The figures thus far for 1977 indicate that this falling off in strike activity is continuing at present. Figures for the first six months are down 50% in the number of strikes compared to the same period last year. However, it must be noted they are also up 29% for workers involved and 55% for man-days lost. This decline in the number of strikes per year experienced in Alberta (which does not account for the statistics from the October 14, 1976 "Day of Protest"), it is argued here, is in no small part due to the current wage and price restraints brought into force in late 1975. More will be said on this in the final section of this chapter which briefly deals with the anti-inflation legislation.

Incremental Strike Incidence In Alberta

Looking at the incremental incidence as outlined in table 4-2 it can be seen than no sign pattern develops either in the time sequence of the number of strikes, workers involved, or man-days lost, nor in the inter-relationship of the three statistics. That is, there are no statistically significant "runs", nor is there a mathematically functional relationship between the number of strikes, workers involved, or man-days lost. Take for instance 1966 to 1969 when, from 1966 to 1967, the number of strikes increased by 10 (143%) whereas the number of man-days lost decreased by 24,329 (roughly 110%). In 1968 when the number of strikes increased by 42 over 1967 (roughly 247%), the number of workers participating in strikes increased by 836 (70%), and man-days lost increased by 32,772 (147%). However, in 1969 when the number of strikes dropped by 44 (75%) the workers involved fell by only 114 (6%) and the man-days lost actually increased by 9,566 (18%). Similar discrepancies appear throughout the data. Clearly

TABLE 4-2

INCREMENTAL STRIKE STATISTICS IN ALBERTA, 1960-1976*

<u>Year</u>	<u>Number of Strikes</u>	<u>Workers Involved</u>	<u>Man-days Lost</u>
1960-1961	+ 3	+ 729	- 7,776
1961-1962	+ 1	-1,384	+ 1,910
1962-1963	- 3	+ 135	+ 11,324
1963-1964	- 4	-1,135	- 28,351
1964-1965	+ 2	+ 175	+ 62
1965-1966	+ 3	+ 953	+ 42,221
1966-1967	+10	- 7	- 24,329
1967-1968	+42	+ 836	+ 32,772
1968-1969	-44	- 114	+ 9,566
1969-1970	- 7	- 128	- 25,905
1970-1971	+ 9	+6,781	+ 39,020
1971-1972	- 8	-7,605	- 50,684
1972-1973	+19	+4,895	+127,373
1973-1974	+15	+1,858	+ 12,571
1974-1975	- 9	+2,837	+213,218
1975-1976	- 5	-5,567	-282,470

*Derived from table 4-1; 1977 data incomplete and therefore not utilized.

the relationship between the number of strikes and man-days lost is fairly loose, although the number of workers involved and man-days lost are, as might be expected, much more highly correlated.

The Kelly Measurements

Before leaving this section on the general incidence of strikes in Alberta, a recently released study on work stoppage measurement by Professor L.A. Kelly of the Industrial Relations Centre at Queen's University ought to be considered. In the paper Kelly questions the appropriateness of the presently used strike activity measurements (ie. number of strikes, workers involved, and man-days lost).¹⁰ He proposes the adoption of three new or additional measures: 1) "incidence" - the proportion of settlements preceded by a work stoppage to all settlements; 2) "weighted incidence" - the number of workers involved in such strikes as a proportion of those covered by all settlements; and, 3) "composite incidence" - the number of man-days lost per worker as a proportion of those covered by all settlements. The study tests both sets of measures and compares the results concluding:

"...conventional strike measures are limited as a means of determining variations in the propensity to strike, since they reflect changes in the level of bargaining activity. The three measures that we have proposed adjust for the differences in the level of bargaining activity and, accordingly,¹¹ provide truer indications of the propensity to strike."

The justifications for not utilizing these more sensitive measurements here are twofold. Firstly, the additional data required for development of the measures is simply, at least in Alberta, not available.¹² Kelly, in his study, used figures derived from the Federal Labour Department's "Collective Bargaining Review" monthly in determining at which stage of the collective bargaining process settlements were reached, and the number

of workers covered thereby. Unfortunately this information is only compiled for agreements covering 500 or more workers, other than in the construction industry; this would overlook 80-85% of all collective agreements in Alberta.

The second justification for the failure here to develop such measurements is that, even once the necessary data is attained, the results of the new tables and graphs, as even Kelly himself hedges at admitting,¹³ are not exceptionally different than those under the conventional measurements when looking at the aggregate (as opposed to the inter-industry) level of strikes. By allowing for changes in the level of bargaining activity from year to year the Kelly measurements tend to de-emphasize the significance of changes in strike activity level which correspond to those in bargaining activity and highlight shifts in stoppage levels which run contrary to those in settlement levels. Nevertheless the general trends of strike activity movement remain similar under both measurement systems. This, it is predicted, will be increasingly so in the near future as there has been, since the advent of the Federal Anti-inflation Guidelines, a trend towards one year agreements.¹⁴ Bargaining levels will therefore remain relatively constant from year to year as opposed to reflecting the two and three year cycles formerly followed in industries such as construction, brewing, etc. Thus, although the Kelly measurements may well be of value in future (when the requisite data is available), especially for inter-industry strike activity studies, they would not add significantly to the insights derived from the more conventional data presented for the aggregate level of strike incidence.

FIGURES FOR THE PUBLIC SECTOR

As the legislation governing strikes in the public and private sector differs, it would be helpful, for purposes of formulating proposals,

to establish the proportion of total strike activity attributable to each sector. To do so the private sector will be treated here as the "residual" and the focus will be on delineating strike incidence in the public sector. Unfortunately, appropriate data from which to derive such statistics is woefully lacking and the statistics are therefore, to be viewed with some skepticism.

Levine has made an attempt to split the comprehensive federal classification system used in recording strike data into the two sectors.¹⁵ The figures he has reported clearly indicate a general rise in the proportion of public sector disruptions relative to that in the private sector. A portion of this rise can be attributed to recent growth in unionism in the sector, and the "catch-up" demands that have been made in the quest for compensation parity with parallel private-sector employees. Levine's national figures show that an average of roughly 25% of all strikes, 37% of all workers involved in strikes, and 23% of all man-days lost due to strikes in the 1970-1975 period are attributable to the public sector.

Alberta Public Sector Statistics

Table 4-3 presents a public and private sector breakdown of strike statistics for Alberta for the years 1970 to 1976. Note in this province the 1970-1975 period saw an average of roughly 15% of all strikes, 36% of all workers involved in strikes, and 21% of all man-days lost due to strikes came from the public sector. Thus, although the proportion of strikes is lower, the proportion of workers involved and man-days lost is more or less in line with those for the national average found by Levine. However, it must be remembered that, as was stated in Chapter Three, the vast majority of provincial employees in Alberta are forbidden to strike and this fact no doubt accounts for some of the difference in the propor-

TABLE 4-3

A COMPARISON OF WORK STOPPAGES IN THE PUBLIC
AND PRIVATE SECTORS IN ALBERTA, 1970-1976

A. Number of Strikes

<u>Year</u>	<u>Total</u>	<u>Private Sector</u>	<u>Public Sector</u>	<u>Public Sector as a % of Total</u>
1970	11	8	3	27.3
1971	17	13	4	23.5
1972	10	10	0	0.0
1973	32	28	4	12.5
1974	44	40	4	9.1
1975	35	25	10	28.6
1976	29	23	6	20.7

B. Workers Involved

<u>Year</u>	<u>Total</u>	<u>Private Sector</u>	<u>Public Sector</u>	<u>Public Sector as a % of Total</u>
1970	1,788	445	1,343	75.1
1971	8,569	2,831	5,738	67.0
1972	964	964	0	0.0
1973	5,859	2,988	2,871	49.0
1974	7,717	6,987	730	9.5
1975	10,554	8,889	1,665	15.8
1976	4,987	2,243	2,744	55.0

C. Duration in Man-Days

<u>Year</u>	<u>Total</u>	<u>Private Sector</u>	<u>Public Sector</u>	<u>Public Sector as a % of Total</u>
1970	38,660	28,477	10,183	26.4
1971	77,680	44,037	33,643	43.3
1972	26,996	26,996	0	0.0
1973	154,369	91,028	63,341	41.0
1974	166,940	158,456	8,484	5.1
1975	380,158	344,356	35,802	9.4
1976	97,688	74,940	22,748	23.3

Source: Derived from "Strikes and Lockouts - Alberta", Research Service, Alberta Department of Labour, an unpublished report series. Each employer struck in the given years was reviewed and all municipal, provincial (legal ones), and federal strikes separated. Data prior to 1970 is incomplete and therefore not presented.

tion of public sector strikes. A comparison of parts A and C of table 4-3 to part B thereof shows evidence that although a relatively small proportion of all strike actions are in the public sector, they generally involve larger numbers of strikers and are relatively shorter in duration than strikes in the private sector. There does not appear to be any set pattern in the peaks and troughs of public-sector strike activity, but although the proportional number of strikes has fallen slightly in 1976, it is to be noted that the proportion of workers involved and man-days lost due to strikes are now on the rise.

THE EFFECTS OF INCOME POLICY LEGISLATION ON STRIKE INCIDENCE

Purpose Of The Legislation

On the evening of October 13, 1975 Prime Minister Trudeau informed Canadians that as of the following day wages and profits would be controlled by anti-inflation guidelines to be set out in regulations enforced by a statutorily constituted board.¹⁶ On December 3, 1975 the House of Commons passed Bill C-73, "An Act to provide for the restraint of profit margins, prices, dividends and compensation in Canada". The Anti-Inflation Act¹⁷ (hereinafter referred to as the A.I.A.) empowers the Anti-Inflation Board (hereinafter referred to as the A.I.B.) to "monitor changes in...(inter alia) compensation...in relation to the guidelines" and "identify actual and proposed changes in...compensation...that, in its opinion, contravene or, if implemented would contravene the guidelines either in fact or in spirit" and ultimately "refer the matter to the Administrator".¹⁸ The Administrator has the power to "make such order as he deems appropriate to prohibit the person from contravening the guidelines" and "to require the person to pay Her Majesty in the right of Canada an amount stated in the order equal to the whole or any portion of the excess

amount or value so received".¹⁹ There are provisions for an appeal,²⁰ but only a few have been successful.

A.I.A. Provisions

The controls were originally not slated to end until December 31, 1978.²¹ They have not found favour with either labour or management; both have been strange bedfellows in a lobby for early dissolution. Predicted dates for a premature end to the restraints have come and gone²² and Prime Minister Trudeau at one point made it clear that the controversial program will stay "until we have agreement from the main economic decision makers in the economy on some kind of voluntary restraint".²³

Nevertheless it appears from Mr. Cretien's (Minister of Finance) October 20, 1977 "mini-budget" that some form of decontrol program will begin April 14, 1978.²⁴ The as yet unclear "phased process of decontrol" has been attacked by the Canadian Labour Congress as a tightening of controls (reducing maximum increase for 1977 from 8% to 6%) and an actual extension of the program beyond December 31, 1978 for those whose contracts are negotiated before April 14, 1978.²⁵

At present the wage control segment of the program provides for a "basic protection factor" increase of 8% for 1975, 6% for 1976, and 4% in 1977 (scheduled to be changed under the mini-budget discussed above) with the possibility of an additional 2% per year for productivity increases ("national productivity factor") and/or 2% per year for maintenance of "historical wage relationships" ("experience adjustment factor").²⁶ Raises amounting to less than \$600 per year are exempt, but no increase in excess of \$2400 per year is allowable.²⁷ Everyone is subject to the enforcement of the guidelines, but the machinery of reporting systems etc. applies formally only to: 1) all firms with more than 500 employees; 2) all firms

in the construction industry with more than 20 employees; 3) all federal and (by agreement) provincial government employees; and, 4) all professionals who earn on a fee basis.²⁸

Effect On Strike Incidence

The question remains as to what the effect of such an income policy is on collective bargaining and strikes. To the minds of many labour leaders these reforms serve only to destroy the whole process. Shirley Carr (Executive Vice-President of the Canadian Labour Congress) states it thus:

"...we will not be a party to a so-called reform of economic institutions which in reality reduces the real earnings of working people, puts their power to protect themselves through collective bargaining in a permanent deepfreeze, and threatens our democratic political system with solutions imposed by Government decree."²⁹

Notwithstanding all the prophesies of doom and dire consequences, collective bargaining does seem to have survived the impact of the controls.

There has been a shift to shorter term collective agreements,³⁰ but the most significant effect of the program on the system appears to be in relation to strike activity. A.I.B. rulings have, in themselves, sparked a few strike actions.³¹ There was, of course, also the October 14, 1976 "Day of Protest" at which official estimates set workers involved and man-days lost at 830,000.³² The strike covered front pages of newspapers across the country but was of dubious success; support differed in each province. Reg Baskin (Alberta Federation of Labour President) admitted disappointment in the fact that only 48,000 workers (a liberal estimate) in this province stayed off the job.³³

Regardless of the isolated incidents and the major protest, overall the A.I.B. legislation may well have had the effect of causing the

reduction in strike incidence which, as noted above, has been experienced in 1976 and 1977.³⁴ It makes little sense, in terms of the role of the strike in the collective bargaining system, to use the weapon when management is in effect powerless to concede to a union's demands even if it would normally do so otherwise. Any strike, in the result, becomes one against the government and the controls and the local union membership can only lose in such a battle. The "costs" of a wage strike will nonetheless be fully experienced, but the desired benefits would generally be limited by the A.I.B. guidelines levels. The vast majority of employers readily agree to meet the allowable increases and thus strike action becomes a costly exercise in futility.

Problems In Decontrol

The Woods Report in 1968 did not decide whether the cost-push or demand shift theories of a causal relationship between inflation and collective bargaining were fact or myth.³⁵ It did however come out strongly against institution of an income policy incorporating a guidelines system as we now have,³⁶ because, inter alia, "guideposts are likely to have adverse effects on the negotiation strategies of the parties, on the conciliation procedures, and on other methods of dispute settlement". The Report may have unknowingly foreshadowed an impending round of industrial strife such has rarely been experienced in this country before. It is becoming increasingly evident that many unions have simply adopted a waiting game strategy and fully intend to demand recoupment of A.I.B. cut-backs as soon as decontrol is complete. A good case in point for analogy is the actions of many landlords in this province who sent out due notice of rental increases of 70% plus to their tenants "just in case" rent controls were lifted this spring (1977). Evidence of this strategy in union demands

can be found in the "A.I.B. clauses" which have been negotiated. Such clauses in collective agreements provide for employees to receive higher benefits as soon as the wage controls are lifted. In this way they are contractually guaranteed to eventually receive greater increases than those currently allowable without risking the kind of penalties imposed on Irving Pulp and Paper Limited.³⁷ Parliament intends amendments to the A.I.A. to prevent negotiation and operationalization of such clauses,³⁸ but such actions only hit at the symptoms, not the problem.

The point being made is that the decline in strike incidence currently being experienced is deceptive as it relates to labour peace. It is the result of an alien external pressure coming from the present incomes policy legislation, and is not, as it should be, resulting from the efficient operation of the internal strike-threat system. As argued previously, it is the threat of the strike which promotes true labour peace through compromise. The present relative tranquility is as false as a cobalt remission for a cancer patient. Unless the proposed decontrol program can be instituted in a manner which ensures smooth transition back to completely free collective bargaining, we can expect a round of 30% plus "recoupment demands" as soon as the legislative constraints are removed. The consequential labour strife may well match that experienced under the "catch-up" demands of the 1968-1975 period. Without an effective decontrol program only the strike-threat will be left to coerce peaceful settlement of these pent-up demands.

SUMMARY

In this chapter it has been noted that strike activity seems to be primarily a regionally orientated phenomenon. There is little correlation in incidence levels between the provinces over the years save for

that caused by forceful national policies (eg. the A.I.A. caused fairly consistent drops across the country). Alberta's incidence is somewhat lower than the national average although it has shown definite trends of increase up to the last couple of years. There does not appear to be any pattern or cycle in the 1960-1976 period, nor any strong relationship between the three conventional measures of incidence - number of strikes, workers involved, and man-days lost. The more sensitive measures proposed by Kelly, which allow for changes in bargaining level, do not appear to give significantly different results to the Alberta aggregate level statistics.

It was found that although the national average for public sector strikes as a proportion of all strikes was approximately 25% over the 1970-1975 period, Alberta's proportion was only a 15% average for the same years. Nevertheless Alberta's proportional figures for workers involved and man-days lost are roughly equivalent to those for the country as a whole. All of these statistics show a recent trend of increase indicating a proportional rise in propensity to strike in the Alberta public sector.

The present anti-inflation regulations have had a dampening effect on strike activity in 1976 and 1977, thus creating a false sense of relative industrial peace in Alberta and elsewhere in the country. Once the controls are removed and the perceived benefits of strike action are restored we can expect a flurry of labour strife unless the strike-threat cost is sufficient to coerce compromise from the parties. Thus, more than ever, there is a need to restore the strike-threat system to its former levels of efficiency. Elements contributing to the deterioration of the effectiveness of the strike-threat must be isolated in order that proper corrective measures can be prescribed. The chapter which follows attempts

to identify some of these sources of the declining utility of the strike.

FOOTNOTES

CHAPTER IV - THE INCIDENCE OF STRIKE ACTIVITY

1. Griffin, John I., Strikes: A Study in Quantitative Economics, (1968), p. 204.

2. Ross, Arthur M., and Hartman, Paul T., Changing Patterns of Industrial Conflict, (1960), pp. 42-59.

3. For example, Kinsley, B.L., "Trends in Canadian Strikes 1917-1972", Labour Gazette, Vol. 76, No. 1 (January 1976), p. 28; see also the detailed U.S. study by Rees, A., "Industrial Conflict and Business Fluctuations", Journal of Political Economy, Vol. 60, No. 1 (October 1952), pp. 371-382. Griffin, op. cit. (see note 1), pp. 204-205, also found such a correlation.

4. For example, Jamieson, Stuart M., "Patterns of Industrial Conflict", in Hameed, S.M.A., editor, Canadian Industrial Relations, pp. 339-346. Jamieson also notes Vanderkamp, John, The Time Pattern of Industrial Conflict in Canada 1901-1966, Task Force on Labour Relations, Project No. 52a (Draft Study), which concurs with his view (see pp. 44-49 thereof).

5. As it is defined by Jamieson, op. cit. (see note 4) p. 339.

6. Source: derived from Information Canada, Strikes and Lockouts in Canada 1974-1975, (catalogue no. L2-1/1975), Table 1, "Strikes and Lockouts in Canada, 1901-1975", pp. 5-6. The 1976 figure is derived from data in Labour Gazette, Vol. 77, No. 4 (April 1977), p. 240; it is a preliminary figure, but nevertheless not a volatile one and therefore reliable. 1976 is the latest data available.

7. Source: an unpublished interdepartmental bulletin calculated by the Research Service Branch, Alberta Department of Labour. Data for 1960-1968 is not available as sufficient accurate records were not kept.

8. Jamieson, op. cit. (see note 4), p. 342, brackets added.

9. This table is a composite of 1960-1962 data from the federal publication "Strikes and Lockouts in Canada" (op. cit., see note 6) and unpublished data from the Research Service Branch, Alberta Department of Labour for 1963-1977. Note in some cases the Alberta statistics from the provincial service do not match those given in the tables in Appendix B which came from federal sources. In this study the provincial data is felt to be more accurate and therefore has been used, where available, in the chapter.

10. Kelly, L.A., Measuring Strike Activity, (1976), pp. 1-3.

11. Ibid., p. 9.

12. Mr. M. Oscroft of the Research Branch of the Alberta Department of Labour informs that a system to accurately record the number of settlements reached (ie. agreements filed with the Board of Industrial Relations) and the number of employees covered thereunder has only been instituted as of July 1, 1977 and will be used for prospective years only. It is felt research to construct such data for past years is not worthwhile as the reliability of such figures would be questionable.

13. Kelly, op. cit. (see note 10), pp. 9-10.

14. See Alberta Department of Labour, Annual Report 1975-1976, (March 31, 1976), p. 36, wherein this proposition is supported.

15. Levine, Gilbert, "The Inevitability of Public Sector Strikes in Canada", Labour Gazette, Vol. 77, No. 3 (March 1977), p. 118.

16. Mr. Trudeau's speech is reproduced in Wood, W.D. and Kumar, P., editors, Canadian Perspectives on Wage-Price Guidelines, (1976), pp. 317-324.

17. S.C. 1975, c.75, as amend. S.C. 1976, c.98.

18. A.I.A., s.12(1)(a),(b),(d), brackets added.

19. A.I.A., s.20(1),(4),(5).

20. A.I.A., s.30-38.

21. A.I.A., s.46(2).

22. For example, the Canadian Labour Congress issued a press release confidently stating the controls would be off by late May or early June 1977, Edmonton Journal, Tuesday, April 26, 1977, p. 19.

23. As quoted from Trudeau's remarks to Sinclair Stevens (Conservative financial critic) in the Edmonton Journal, Friday, May 27, 1977, p. 33.

24. House of Commons Debates, Vol. 121 No. 3, 3rd Session, 30th Parliament (October 20, 1977), pp. 99-100.

25. Newsline, Labour Gazette, Vol. 77, No. 12 (December 1977), p. 527.

26. Anti-Inflation Act Regulations ("Anti-Inflation Guidelines"), s.45-48.

27. Ibid., s.43.

28. Wood, op. cit. (see note 16), pp. 320-321.

29. As quoted in Perspective (March 1976), p. 3, from a prepared statement issued by the Canadian Labour Congress ("Perspective" is the former title (now "Impact") of the A.U.P.E. monthly newsletter for its members).

30. For example, the Alberta Construction Labour Relations Association was forced to settle for a one year agreement (as opposed to the traditional two year contracts in the industry) as the 35,000 unionists it bargains over do not want to be caught out if A.I.B. guidelines are removed in the near future, Edmonton Journal, Monday, May 2, 1977, p. 15.

31. For example, 1400 workers at Saint John Shipbuilding and Drydock Limited walked off their jobs after receiving reports the A.I.B. had rolled back their 13% raise to 10%, Edmonton Journal, Thursday, October 14, 1976, p. 8; in British Columbia, 1400 United Mine Workers struck Kaiser Resources Limited for almost two months in protest over a roll-back by the A.I.B. which set its 17.8% and 11.4% two year contract increments back to 9% and 6%, The Wall Street Journal, Friday, July 16, 1976, p. 25. At Irving Pulp and Paper Limited, the A.I.B. cut 500 Canadian Paperworkers' increase from 23.8% to 14%, Irving paid its workers at 23.8% pending an appeal and was fined \$125,000.00 (\$100,000.00 paid to the workers and a \$25,000.00 penalty); Denison Mines Limited suffered a two week strike because of a roll-back, a large part of which was later reinstated as the result of an "arithmetic error"; Inco Limited had a two week strike at its Thompson Manitoba mine when 2,800 workers' wages were rolled back, eventually the original increase was almost totally restored, The Wall Street Journal, Monday, September 27, 1976, p. 30.

32. Labour Gazette, Vol. 77, No. 2 (February 1977), p. 96.

33. As quoted from Baskin in the Edmonton Journal, Friday, October 15, 1976, p. 37; see also p. 1 (Canadian Labour Congress estimate of 48,360).

34. This proposition is concurred with by Mr. M. Osofrot, Research Service, Alberta Department of Labour.

35. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Industrial Relations (1968), pp. 80-82, paras. 240-249.

36. Ibid., pp. 190-191, paras. 660-664.

37. The Irving Case is discussed in note 31, supra.

38. See the Edmonton Journal, Friday, June 17, 1977, p. 7.

CHAPTER V

THE DECLINING UTILITY OF THE STRIKE

EVIDENCE OF DETERIORATION

The effectiveness of the strike-threat system in coercing peaceful settlements in negotiations depends on the potency of the threat and therefore on the perceived economic impact on the parties when a strike does occur. Likewise the duration of a strike once it begins depends, in large part, on the costs being experienced by the parties.¹ This effectiveness is seriously in question when, for example, an Inco Limited employee, after being on strike for over three months, can go for a car dealer's offer of \$200.00 cash to the striker and three years to pay off a brand new car;² or when the Husky Oil Limited plant at Lloydminster can operate at normal winter levels and revenues while its fifty-three employees picket outside.³ Many other similar examples can be found (along with numerous quotes from various government, management, and labour officials such as that of the United Rubber Worker representative quoted in Chapter One⁴) which support the declining utility theory. Stern cites the increasingly frequent attempts of industrial relation practitioners to improve methods of dispute settlement as a measure in itself of the declining utility of the strike.⁵

Both Stern and Levine⁶ note that there is even stronger evidence of the deterioration of strike effectiveness in the fact that both the duration of strikes and the frequency of strikes have generally been rising. The latter source of evidence (the increasing incidence) has been discussed

in the previous chapter.

It is not suggested that the declining utility is by any means the sole cause of the higher incidence for certainly there are many factors operating on this variable. For example, the 1976-1977 decline in the number of strikes is argued here as resulting from the external factor of the present incomes policy legislation. Nevertheless, until the last two years the level of strike activity (as measured by man-days lost as a percentage of estimated working time) had risen to that previously only experienced immediately following the two world wars.⁷ Further, the 1975 peak was not (as with the 1919 and 1946 high points) an isolated upsurge, but rather the culmination of a relatively steady increasing incidence which began in 1966.⁸ Thus, notwithstanding the multiplicity of strike causes, a forceful argument can be made that at least a significant portion of the rising incidence of strikes could well be attributable to a decline in its effectiveness in coercing peaceful settlements. In the terminology of the Woods Report, the threat of conflict is becoming less efficient at resolving conflict, and as a result thereof the incidence of overt conflict has risen.

Statistical Evidence

An alternative way to look at the decreasing threat effectiveness in terms of the incidence of strikes is to consider the "incidence" measurement of strike activity proposed by Kelly which was discussed in Chapter Four. The logged data used in Kelly's aggregate level study shows that the number of settlements involving strikes, while correlated at a 1% significance level to changes in the bargaining level, has risen at a proportionally greater rate than the number of all settlements.⁹ This again would indicate that the strike-threat seems to be becoming less

effective in promoting peaceful resolution of negotiation differences.

A perhaps more direct source of evidence of the declining utility of the strike itself (as opposed to the strike-threat) is that of the generally increasing length of work stoppages once they actually begin. The increasing length of strikes in Canada is, as Hameed has noted,¹⁰ empirically borne out by the statistics on the average duration of strikes which have shown an incremental trend since World War II. The rise has not been as steady as that with respect to the number of strikes, but is nevertheless clearly apparent.

The increasing duration of strikes is directly related to the impact thereof on the parties. As Stern states:

"In a situation where no attempt is made to operate a struck plant, economic pressure on both sides to settle mounts steadily, and the parties are often forced to accept a compromise which might have been unacceptable just prior to the strike...several financial mechanisms have been developed, however, which enable the parties to withstand economic pressures more effectively than formerly. These mechanisms, by strengthening the contestants, have tended to increase the duration of strikes."¹¹

Public toleration of a strike is inversely related to the duration. As the average duration of strikes increases, public toleration declines and the clamour for some different dispute resolution mechanism, other than a drawn out war of endurance, rises.

AN EXPLANATION OF THE DECLINING UTILITY

In discussing the role and function of economic sanctions in the collective bargaining process Professor Brian Williams concluded:

"Suffice it to say here that the work stoppage possibility profoundly influences the relative bargaining power of the parties and as such plays a paramount role in the ability of collective bargaining to lead to the satisfactory resolution of differences between the parties."¹²

As was argued in Chapter Two, when the negotiation models of Chamberlain, Pen, Stevens, and Mabry were examined, this "paramount role" is operationalized through analyses by the parties leading them to the conclusion that it would be less costly to compromise than to suffer or engage in a work stoppage. It is the threat of a strike which coerces agreement. The threat is only as potent, and therefore as effective, as the perceived consequences of actual sufferance. That is, in terms of the negotiation models, the threat of a strike forces compromise only to the extent the parties believe the costs of disagreement exceed those of agreement. Obviously at some point (ie. some level of demands) it will be more costly to agree than to refuse to make further ameliorative offers. It is equally clear that that point is largely determined by the parties' estimation of the losses which they would suffer as the result of a strike. In like manner, the decision to make further concessions in negotiations after a strike has commenced is strongly influenced by the economic consequences being experienced under the stoppage; the greater the impact on the parties the stronger the motivation to settle.

Declining Perceived And Actual Costs

If one accepts that the pivot of the strike/compromise (or strike continuation/settlement) decision is indeed in large part a function of the perceived or actual costs of a work stoppage, then it logically follows that the utility of the strike-threat system to promote peaceful settlements (and the utility of the strike per se to quickly resolve impasses) is a function of the perceived or actual costs of a strike. If a party can reduce the cost of a strike to itself its bargaining power is consequently increased. If both parties can reduce the cost of disagreement to themselves, the pressure for settlement diminishes therewith since the relative

cost of compromise is increased. The obvious result of the latter is that the effectiveness of the strike and strike-threat system is reduced and more labour strife will be experienced.

In the statement of thesis in Chapter One of this paper it was argued that both labour and management have, over the years, developed what are termed here "insulating tactics" through which they can reduce the actual losses suffered as the result of strike action. Insulating tactics take the threat out of the strike-threat system by reducing the perceived costs of disagreement and thus reduce the pressure for peaceful settlement. They also remove the impact of an actual strike on the parties thereby diminishing the urgency of resolving an impasse dispute. Thus, the theory of the cause of the declining utility of the strike weapon offered here, and alluded to in the quote from Stern noted above,¹³ is that these insulating tactics are at the root of the efficacy deterioration.

FACTORS IN THE DECLINING UTILITY PROBLEM

It is neither necessary nor possible to present an exhaustive list of factors which are contributing to the diminution of the effectiveness of the strike-threat system. With some factors, such as automation, the effect on strike efficiency is merely an externality or spill-over from the main object of the endeavor. Other tactics, such as strike pay benefit funds, are consciously adopted expressly to defray the economic impact of engaging in a strike. A number of the more prevalent of both types will be examined here to further illustrate the nature of the declining utility problem. The factors have been divided into two categories: those which aid management, and those which aid labour.

The Management Insulation Tactics

a) Automation

One of the most devastating factors contributing to the declining effectiveness of the strike is automation. Automating a plant not only reduces the necessary number of bargaining unit employees (and consequently the union's power), but also results in an increased number of technically skilled supervisory staff. This frequently makes it possible to operate the plant at full (or at least partial) capacity with salaried employees without having to resort to "blacklegs" or "scab labour". Maintenance is simply postponed and inspection activities are reduced until settlement. Operation of the plant despite a strike is becoming increasingly more common.

The production sector is clearly more susceptible to automation than is the service sector, which is based more on human interaction than mechanics. It is noteworthy that Alberta has a very significant portion of its employment in meat packing (the largest production industry employer in Alberta) and petroleum production (the second largest), both of which are highly automated.¹⁴ Further, yearly capital investment in plants, machinery and equipment in Alberta has risen from \$1,220.6 million in 1960 to \$2,486.4 million in 1970 and by 1974 was up to \$4,503 million (up 81% over 1970),¹⁵ indicating (relative to employment increases) a move to more capital intense production. Stern notes a United States study which revealed that the increased resort to automation has resulted in a general industry supervisory and technician to bargaining unit employee ratio of one to three, and that in technologically advanced industries, such as petroleum refining, it is approaching one to one.¹⁶

b) Technological Advances

Closely aligned to automation is what will be termed here technological advances. This is more or less a residual scientific innovation "catch-all" which encompasses everything from the plastic green garbage bags which Levine attributes to the prolongation of municipal "sanitary engineer" strikes,¹⁷ to containerization in the shipping and transport industry and improved methods of packaging and storage which reduce the deterioration-of-inventories threat to a struck company. To the extent any such technological advance reduces the public and economic pressure on management to settle it contributes to the declining effectiveness of the strike.

The "branch-plant" character of many of Alberta's major employers also adds to the reduced effectiveness of a strike, especially when settlement terms must be approved by head office. Not only is the immediate impact of the strike pressure isolated from the resolution decision centre, but also, as with any multi-national operation, the lost production can often be made-up in other company plants represented by different unions (or even non-union plants). Further, many companies are now following the United States example and locating auxiliary or future branch plants in small rural townships where there is still resistance to unionization and strike activity.

c) Inventory Buildup

Pre-strike inventory buildup is another major cause of reduced strike impact (post strike catchup has a similar effect in the long run). Such activity would give the company, in the words of Thieblot and Cowin, "little incentive to settle until the inventory was largely disposed of".¹⁸ Further, such activity frequently gives the worker additional funds with

which to withstand the strike by virtue of the overtime he may work before a strike to build the inventory. The Canadian Manufacturers Association recommends to its members that their pre-strike preparations include warehousing of inventory in off-plant commercial space to avoid problems of moving it through the picket lines.¹⁹ It also recommends advising customers of an impending strike which of course, as Stern notes,²⁰ allows them to build up their inventories of the threatened company's products. In August 1974 a strike at Alberta Brewers' Agents Limited was prolonged from the union's expected three to seven days to some three weeks when an inventory of more than a million cases of beer was cleaned out of the company's and the breweries' warehouses across the province in the two days between service of strike notice and commencement. Obviously the company was under little pressure; it had made its expected sales for the next few weeks and the revenues were flowing in while labour costs were greatly reduced. Strikers had to simply sit back and wait for supplies to dry up to the point where the company began losing money.²¹

d) The Public Sector Fiscal Crisis

Whereas (as the above cited case illustrates) in the private sector protection of revenue flows is a prime motivation factor for impasse settlement, peculiar to the public sector is the fact that the revenue-loss pressure is not a factor in the first place. Levine has stated the proposition that, given the current fiscal crisis in governments, opposite forces are at play in the public sector: when most government employees strike "there is no payroll to be met and so costs are reduced. Yet there is no corresponding reduction in revenues - tax money still keeps rolling in despite the strike."²² Levine suggests it is in the interests of a department's budget, commonly insufficient for its duties, for the unit's

management to provoke a strike. Whatever the validity of this allegation it is not unreasonable to conclude that absence of revenue-loss pressure and the current tight budget situation are largely responsible for the increasing length of public sector strikes and the generally longer duration of strikes in that sector relative to those in the private sector. Since public sector strikes are growing as a proportion of total labour strife incidence, it can be argued that this factor is a significant component cause of the overall decline in strike effectiveness.

e) Employers' Associations

The increasing resort to employers' associations is also enabling management to withstand strike pressures for much longer periods. Many of Alberta's smaller employers find it all but impossible to stand up to demands from unions which also cover employees of competitors. The unions can threaten to strike only certain employers and benefit from the additional pressure on the threatened employer of loss of competitive position and customers to the companies not designated to be struck. Once the threatened companies concede the rest must fall in line or risk the same consequences. However, by forming solidarity fronts (in the form of employers' organizations) employers can avoid the selective strike. If the union strikes only certain members, the other members can lock out (provided there has been due compliance with the labour Act). The result is that the loss of competitive position threat is no longer operative and the pressure on management to settle is consequently diminished. This in turn tends to increase the likelihood or duration of a strike.

f) Strike Insurance

The final management tactic to be considered here is also gaining in popularity amongst employers. This is what has been termed "strike

insurance". It is not a policy per se as would come from the insurance industry.²³ The concept hails from the United States, and the first real success story was in the airlines industry.²⁴ The scheme amounts to employers in a given industry agreeing that should one or more of them be selectively struck by the union it will be reimbursed at least a portion of its loss of profit for championing management's stand. The money may come from a funded source or from assessments made on members while the strike is in progress. The Woods Report considered this tactic a bona fide element of management's strength and recommended no attempt be made to prevent such schemes.²⁵ The obvious result of strike insurance is that the employer being struck can afford to hold out much longer, thus increasing the duration of the strike. The union's counter attack would be to strike all the insurance fund members simultaneously, thereby increasing the incidence of strike activity. Strike insurance is more or less the quid pro quo to the strike pay benefits which workers generally receive while on strike.

The Union Insulation Tactics

a) Strike Funds

A major boon to union solidarity in the economic confrontation with management has been the strike fund. Many strikes would never be consented to by the rank-and-file were it not for the security available through strike-pay benefits. The funds are similar to a group funded insurance plan the premiums for which are an added portion of union dues. In some respects it boils down to a forced saving plan for the contingency of a "rainy day". Nevertheless such benefits, though far from opulent, enable workers to continue a strike for a longer period than otherwise would be the case. Strike fund balances (and the benefits paid therefrom)

have been growing over the years, and it is becoming increasingly common that inter-union loans are arranged to allow continued benefits when a striking unit's funds begin to deplete.

b) Consumer Credit and Savings

The present day wide availability of consumer credit, sometimes augmented by union solicitations to local merchants,²⁶ also helps workers to bear the economic brunt of a strike. Minimal payments can be made until the strike is over and former levels of purchasing power are regained. As a result of the relative affluence of the decades since the war many strikers have at least some savings on which they can draw to tide them over. Frequently the worker can count on being able to pay off credit and restore savings with the extra money which will come from overtime after conclusion of the strike as the employer attempts to recoup lost production and sales.

c) High Employment Rates

Another factor more prevalent in Alberta than elsewhere in Canada is that the unemployment rate is such that strikers can often find alternate jobs to help them over the strike period. This is especially true of tradesmen whose skills are in demand; others can register with odd-job employment agencies to make extra money. Some unions use connections with other unions to find jobs for their membership. In such cases a portion of the worker's earnings may be allocated to support those tending the picket lines.²⁷ As was concluded in a recent British study which considered the effect of such "invisible earnings" in financing strikes: "It is impossible to produce figures as to the extent of a practice which though well-known is not documented."²⁸

d) Employed Spouses

The last factor which will be discussed here as enabling strikers to better withstand the costs of a strike is that of employed spouses. If another family member is holding down a job the striker often will not need any other income source to wait out the stoppage. Quite often the second income normally only goes to purchase "luxuries" and aid savings anyway. As of May of 1977, out of the 861,000 total labour force in Alberta some 207,000 were spouses of the major family income earner.²⁹ This proportion has been steadily rising. So long as the remaining income can meet the bills there is little pressure on the striker to reexamine his position on bargaining demands and seek a compromise settlement.

e) Public Assistance Programs

Perhaps one factor which ought to be just briefly mentioned is that of public assistance programs. In the United States workers on strike can get food stamps and until recently,³⁰ unemployment insurance benefits. However, in Alberta workers who are involved in a strike are precluded from receiving either welfare benefits³¹ or unemployment insurance benefits.³² The only public benefits available to strikers which may possibly economically aid them are those covered under Medi-care, and this is of doubtful impact of any significance in relation to strike incidence or duration.

SUMMARY

The generally increasing duration of strikes, increments in the number of strikes, and the rise in the number of strikes as a proportion of the number of collective agreements negotiated, provide evidence of the declining utility of the strike which is being alleged by many officials of labour, management, and the government. The explanation of the cause of this declining utility which is offered here is that it is the result

of insulating tactics or factors through which the parties can protect themselves from the economic impact of a strike. If the perceived cost of disagreement is reduced a party will be less likely to agree to a demand and thus the effectiveness of the strike-threat system is undermined. If the actual cost is reduced through such tactics, the economic pressure which coerces quick resolution of the impasse is diminished and the strike will continue longer than need be.

Examples of the factors which reduce the effectiveness of the strike against management include automation, increased supervisory staff ratios, technological advances, branch-plant operations, pre-strike inventory buildup, the lack of revenue-loss pressure in the public sector, employers' associations, and strike insurance schemes. Factors which aid unions to stay out longer and defray strike costs are, inter alia, readily available consumer credit, recent general affluence amongst wage earners which has allowed greater personal savings, alternate employment, the increasing number of employees whose spouses also work, and the most significant factor that strike funds and the benefits therefrom have grown considerably over the last decade or so.

The list is certainly not complete. Nevertheless, it is clear that these and other economic factors have combined to reduce the effectiveness of the strike-threat to coerce compromises (and the actualized strike to coerce settlements). Some of the factors noted may well decline in importance as we move into Daniel Bell's technical and service-sector oriented "post-industrial society".³³ No doubt, however, other factors will consequently increase in importance. For example, Hameed has noted that a large number of industries in the tertiary or service sector are government operated,³⁴ certainly this is even more so when speaking of the

unionized segment of that sector. The "government" characteristic is also increasingly more common in the scientific areas which Bell predicts will mushroom to dominate the labour force. As a result, the lack of revenue-loss pressure will become a much greater source of havoc to labour peace under the present collective bargaining system.

Most of the economic factors which have led to the declining effectiveness of the threat of conflict in reducing overt conflict cannot be removed. Hence, without corrective measures, it is clear that the diminution of strike efficacy can only be expected to continue. What is the solution - what can be done to reverse the trend of increasing labour unrest? As noted in Chapter One the vast majority of labour scholars have sought to abandon the strike weapon as we now know it and find an alternative ultimate method of dispute resolution. Many of such suggestions, in substance, amount to a modification of the current system. The next chapter will examine a few of the more prominent of these propositions.

FOOTNOTES

CHAPTER V - THE DECLINING UTILITY OF THE STRIKE

1. Professor Cooper has undertaken a nation-wide study on strike duration and the factors thereof. He identifies a number of non-economic considerations such as personalities and competence of negotiators, conflict history, job satisfaction, etc. which also influence duration. However, a large number of the stronger correlations found were related to factors such as strike pay benefit levels, availability of alternate employment, and general economic impact on the parties; see Cooper, William H., A Study of Strike Duration, (1973), pp. 4-18.

2. As stated by Riggin, R.P. (Vice-President, Noranda Mines Limited) in Labour Gazette, Vol. 71, No. 1 (January 1971), p. 15.

3. The Wall Street Journal, Wednesday, December 18, 1976, p. 2.

4. See Chapter One, page 9, and note 19 thereto.

5. Stern, James L., "The Declining Utility of the Strike", Industrial and Labor Relations Review, Vol. 18, No. 1 (October 1964), p. 60.

6. Levine, Gilbert, "The Inevitability of Public Sector Strikes in Canada", Labour Gazette, Vol. 77, No. 3 (March 1977), pp. 117-119.

7. See, Information Canada, Strikes and Lockouts in Canada, 1974-1975, (catalogue no. L2-1/1975), Table 1 "Strikes and Lockouts in Canada 1901-1975", pp. 5-6. In 1919 the level stood at 0.60%, in 1946 it stood at 0.54%; from 1961-1965 it averaged 0.114%, from 1966 to 1970 it averaged 0.352% (up 208%), and from 1971 to 1975 it averaged 0.376%. In 1973 it was 0.30%, in 1974 - 0.46%, and in 1975 - 0.53%.

8. Note also that the 1975 figure contains few, if any, of the now illegal "recognition" and "jurisdictional" strikes which were common in the earlier years.

9. Kelly, L.A., Measuring Strike Activity, (1976), pp. 4-5.

10. Hameed, S.M.A., "Responsive Bargaining: Freedom to Strike with Responsibility", Relations Industrielles, Vol. 29, No. 1 (March 1974), p. 211.

11. Stern, op. cit. (see note 5), p. 63.

12. Williams, Brian C., "Collective Bargaining in the Public Sector: A Re-Examination", Relations Industrielles, Vol. 28, No. 1, p. 25.

13. See page 95, supra.

14. Alberta Department of Business Development and Tourism, Industry and Resources 1975, p. 204 (see also Edmonton Journal, Wednesday, July 27, 1977, p. 60).

15. Ibid., Table 88, "Private and Public Investment in Alberta 1948-1974", p. 202. 1974 is the latest year for which data is available.

16. Stern, op. cit. (see note 5), p. 65.

17. Levine, op. cit. (see note 6), p. 118.

18. Thieblot, Armand J., and Cowin, Ronald M., Welfare and Strikes, (1972), p. 28.

19. Wightman, W.H., On Strike: Manual for Employers, (1973), pp. 7, 11.

20. Stern, op. cit. (see note 5), p. 62.

21. Source: Mr. Ted Wright, former official of Local 288 of the then International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (now the Canadian Union of ...).

22. Levine, op. cit. (see note 6), p. 120.

23. In fact, "business interruption" policies specifically exclude claims based on losses resultant from labour strikes (according to the Deputy Superintendant of Insurance, Mr. T. Saleh of the Insurance and Real Estate Branch). Mr. Ian Dance of Royal Insurance Canada Limited states that his company will not underwrite strike insurance policies and he knows of none in Alberta or Canada. Mr. Dance is the Underwriting Superintendant for Royal Insurance which is the largest such company in Alberta.

24. For examples of strike insurance schemes and analysis thereof see Kahn, Mark L., "Mutual Strike Aid in the Airlines", Labor Law Journal, Vol. 11, No. 7 (July 1960), pp. 595-606; Unterberger, Herbert S., and Koziara, Edward C., "Airline Strike Insurance: A Study in Escalation", Industrial and Labor Relations Review, Vol. 29, No. 1 (October 1975), pp. 26-42; Briggs, J., "The Strike Insurance Plan of the Railway Industry", Industrial Relations, Vol. 6, No. 2 (February 1967), pp. 205-212. Hirsch predicts that the growing resort to such schemes will result in increased strike incidence, see Hirsch, John S., "Strike Insurance and Collective Bargaining", Industrial and Labor Relations Review, Vol. 22, No. 3 (April 1969), pp. 399-415.

25. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Industrial Relations, (1968), p. 160, paras. 533-534.

26. For example, the efforts of Local 351 of the United Rubber Workers noted in The Wall Street Journal, Friday, August 20, 1976, p. 22.

27. For example, this was one of the plans set up in the Alberta

Brewers' Agents strike noted above (see note 19). The relatively short length of the strike made it unnecessary to fully institute the plan but the General Labourers' Union, which has a closed shop hiring hall, was one of the prospective job sources.

28. Society of Conservative Lawyers, Financing Strikes, (1974), p. 9.

29. Source: Statistics Canada, Labour Force Survey Division, The Labour Force (catalogue no. 71-001), Vol. 33, No. 5, Table 7, "Estimates by Province, Family Status, and Sex", p. 19.

30. The United States Federal District Court recently ruled, in a suit by telephone companies after \$49 million in employer funded benefits had been paid to workers on strike for seven months (automation was also a major factor in the duration), that unemployment insurance benefits could no longer be paid to striking workers; see The Wall Street Journal, Wednesday, May 25, 1977, p. 4.

31. Alberta Department of Social Services and Community Health, Social Services and Community Health Policy Manual, "Eligibility, Social Allowance No. 2", Section G, "Special Groups", "1. Persons on Strike", p. 7.

32. Unemployment Insurance Act, S.C. 1971, c.48, s.44; see also Appendix F in Wightman, op. cit. (see note 19), pp. 65-74.

33. Bell, D., The Coming of the Post-Industrial Society, pp. 129-164. Bell has written an extremely persuasive social forecast, many elements of which have already proven out.

34. Hameed, op. cit. (see note 10), p. 211.

CHAPTER VI

ALTERNATIVES TO THE STRIKE

OPENING COMMENTS

At the beginning of this study it was noted that the preponderance of works on impasse resolution have proposed alternative settlement mechanisms of various descriptions. The resourcefulness displayed in these innovative propositions on the one hand speaks well for the authors. On the other hand, however, it poses a question as to their practicality in light of the conservative nature of labour and management with respect to such matters. Clearly if any of these suggestions constituted a panacea for labour strife then it should be promoted vigorously. It is argued here (and evidenced by many of the experiments therewith) that unfortunately none of these alternatives offers a viable solution to current labour problems, at least in the shorter run.

In order to support this argument a number of the more prominent "solutions" will be looked at below. To better illustrate the constructs of these proposals they will be developed here with references to an example of their application and the results thereof. Specifically, this survey includes: 1) compulsory arbitration under a strike ban (as has been the law in Australia since the turn of the century); 2) voluntary arbitration whereby the parties can choose between binding arbitration and the strike-threat system (such as is the case with public service employees of the Canadian Dominion government); 3) a modification of the arbitration mechanism known as "final-offer selection" (as has been experimented with in a number of the United States including Michigan and Wisconsin);

4) the "non-stoppage strike" under which normal company operations continue but profits and wages are withheld (as has been tried by the Miami Transit and Dunbar Furniture companies); and, 5) a new concept known as "single-team bargaining" which has recently been experimented with by Labatts' Breweries of Canada Limited.

Some of these propositions are not truly substitutes per se in that they do not contemplate an absolute ban on strike activity, but all are intended to replace the strike as a method to resolve labour negotiation disputes. The somewhat pessimistic overtone in these opening comments on the efficacy of alternatives offered to date is hopefully justified in the analysis which follows.

COMPULSORY ARBITRATION

The words "compulsory arbitration" to most labour students brings to mind Australia - the country with the most comprehensive, and perhaps the most unsuccessful, operationalization of this dispute resolution mechanism. Although, as a consequence of its prominence, the Australian model will be the example discussed here, it is to be remembered that in Alberta both the police and firemen¹ and most provincial employees² are subject to compulsory binding arbitration and strike prohibition. Compulsory arbitration is the most frequently advocated "solution" by those who would see an end to strikes at any cost. Paradoxically, at least in Australia, such laws seem only to evoke illegal strikes in numbers that have at times exceeded those of legal strikes recorded in Canada. This fact seems to edify the words of Carey McWilliams quoted earlier (cf., Chapter Three) that there is no way to stop workers from striking if they want to strike.

The Australian Model

Jurisdictional authority over labour relations in Australia, as in Canada, overlaps between the federal and state governments. However, the basics of the federal or "Commonwealth" system, with some variations, have been incorporated into the various state statutes.³ A number of states do in fact allow a certain type of strike activity, but only under extremely limited circumstances. Other states have a flat prohibition on all strike activity of any kind. By and large punitive provisions for illegal strikes are monetary in nature, and it is significant that the resort to such sanctions against strikers has greatly increased in the last few decades.⁴ Isaac has noted that when these penalties are invoked (still only in a minority of the cases of illegal strikes) they "...tend to be used more as a device for inducing a return to work rather than as a means of punishment".⁵ Another significant fact is that many of these illegal strikes are in substance protests by workers against unfavourable arbitration awards.⁶ Arbitration boards in Australia, as in Canada, are generally tripartite in nature. Unlike those in Canada though, their format is that of very legalistic "Labour Courts" which render quasi-legislative or "common law" type rulings (which are subject to a "Court of Appeals"⁷) setting contract terms.

Analysis Of The Concept

Simply put, compulsory arbitration amounts to an imposed settlement of contract terms set by a third party and enforced by the authority of the government. As the Webbs put it:

"At the back of the peremptory public demand for settlement of any strike or lock out, there lurks a feeling that in the interests of the whole community neither employers nor workmen ought to be allowed to paralyse their own industry. If one side or the other persists in standing

out, we have a clamour for 'compulsory arbitration': that is, the intervention of the power of the state... 'Compulsory arbitration' means, in fact, fixing of wages by law."⁸

As noted by Professor Charles Rhemus (who studied legislated interest arbitration to evaluate whether it does in fact serve the public interest), many people consider compulsory arbitration a fundamental derogation of the democratic system as it relates to the principle of freedom of choice.⁹

In general both labour and management are adamantly opposed to a compulsory arbitration system. Management strongly objects to having to submit to a third party's decree by virtue of which its labour cost factor is set. Labour's objections are obvious. In the public sector there is the further argument that arbitration amounts to a delegation of sacred governmental authority (to control tax revenue purse strings) to a mere pro tem appointed board. Perhaps more critically, the rampant disregard of the anti-strike laws, as in Australia, erodes the very foundation of governmental authority.

Problems With The System

The Webbs in the late 1800's prophesized that unions would increasingly object to arbitration as an impasse resolution mechanism. They considered arbitration ill-equipped to render mutually acceptable agreements:

"If we turn from the employers to the trade unionists, we find a steadily increasing disinclination among workmen to agree to the intervention of an arbitrator to settle the terms of a new wage contract. This growing antipathy to arbitration is, we think, mainly due to their feeling of uncertainty as to the fundamental assumptions upon which the arbitrator will base his award... Each of the parties implicitly rests its case on a distinct economic assumption, or even series of assumptions, not accepted by the other side, and often not expressly stated."¹⁰

Robert Hines, in a study of compulsory arbitration in the Ontario hospital

system, also notes this problem of uncertainty or lack of predictability in arbitration awards. He concludes that it is a fault which undermines the acceptability of the process itself.¹¹ Hines' proposed solution is adoption of the principles of the stare decisis (precedent) doctrine in arbitration awards.¹² He notes, however, that both the unions and the hospital managements would prefer the strike system. The hospital managements, according to Hines, contend that the unions have done much better under arbitration than they would have under free collective bargaining.

Carl Stevens As A Proponent

In contrast, the uncertainty of arbitration awards (and the criteria to be adopted therefore) is the very reason which Carl Stevens cites as making the arbitration threat analogous to the strike-threat in coercing compromise. Stevens states: "Generally speaking it seems quite possible that a threat to arbitrate, much like a threat to strike, might invoke the negotiatory processes of concession and compromise which are characteristic of normal collective bargaining".¹³ In his analysis bargaining will only occur under compulsory arbitration when the parties have differing expectations and/or uncertainty about the arbitral award.

Stevens concludes that compulsory arbitration may well be compatible with collective bargaining, but only if: 1) strikes are absolutely prohibited; 2) either party can invoke the arbitration process on impasse; 3) the arbitral body is tripartite; and 4) the criteria for the award are neither compromise nor based on principles, but rather developed from "one-or-the-other" decisions based on the parties last offers (ie. a model of the final-offer arbitration to be discussed below).¹⁴

The "Chilling" Effect

One of the most serious problems with the compulsory arbitration

mechanism is what is termed its "chilling" effect on negotiations. That is, that the parties will tend to hold back compromise offers in the face of arbitration since, in general, arbitral awards are based on the compromise criteria (as opposed to the either/or criteria noted by Stevens as necessary for a successful compulsory arbitration system). Obviously if the compromise or "split-the-difference" principle is used to derive an award the parties stand to gain from taking more extreme positions, thus the impetus for concessions is reduced. In the words of Federal Labour Minister Munro:

"There is no denying that bargaining would be inhibited if one of the contenders could convert the process into advocacy before a third party. Should an impasse be reached either labour or management will almost certainly decide that it might get a better deal by resorting to an arbitrator."¹⁵

Rhemus, who concluded in his study that compulsory arbitration could, notwithstanding the "chilling" effect, be an effective mechanism, adds another important caveat to universal adoption of such a system:

"Most of this experience has been with public employees who have never had the legal right to strike. This experience, and current research regarding it, is even more centered upon 'essential' public employee groups who, for obvious reasons, are reluctant to strike even if in fact, and despite the law, they have occasionally done so. Hence one should be extremely cautious in assuming that the results of legislated arbitration would be equally favourable among employee groups with dissimilar attitudes or who have long negotiated under right-to-strike privileges."¹⁶

Thompson and Cairnie, who studied the British Columbia teacher compulsory arbitration system, also concluded that "appropriate conditions" were necessary for success of the mechanism. Not the least of these conditions was "at least tacit support of both parties".¹⁷ Since both labour and management, especially in Alberta, have a strong distrust of interest arbitration such support, in general, is not likely to be readily

forthcoming.

John Crispo As An Opponent

Professor John Crispo, in discussing strikes and their alternatives in the public sector, argues that:

"The case for compulsory arbitration rests not only on the assumption that it would eliminate strikes (which it has not accomplished elsewhere - particularly in Australia, where this approach has long been championed but is now in serious trouble) but also on the belief that it would lead to more equity, fairness and justice - if not in the total distribution of income, at least in labour's share of it."¹⁸

Judging from the reaction of A.U.P.E. members to Bill 41 (P.S.E.R.A.), as illustrated by the 600 who marched on the legislature in May 1977 in opposition to same,¹⁹ the belief in the ability of compulsory arbitration to promote equity, fairness, and justice is totally absent in Alberta (at least from the union viewpoint).

Crispo also notes that the question of "who is going to play God" poses yet another problem to adoption of this system. He contends employers prefer the judiciary as they tend to prefer the status quo, whereas employees prefer academics as they tend to innovate even, at times, just for innovation sake.²⁰ Even if, Crispo says, the problems of the unacceptability of arbitration itself, arbitrator choice, the "chilling" effect, and "face saving"²¹ were to be overcome, the inherent fault remains that compulsory arbitration does not provide the very important safety valve for catharsis of the unavoidable human tensions which develop in industrial relations.

The Intrinsic Defect

Compulsory arbitration also has a psychological or philosophical defect: an arbitration award, no matter how it is developed, phrased, or presented, is still nonetheless a decree or imposed settlement. It is not

a solution in the sense of being a compromise reached by and between the parties. As the organization theorists are quick to point out, acceptance of a decision which sets out rules to govern work relationships is effectively achieved most commonly only when those affected perceive they had a say in the final decision. By their nature arbitral awards will not therefore receive the same degree of acceptance as negotiated settlements. Such awards, as in Australia, may even cause strikes in protest of the imposed terms. The words of Bernard Cushman, who conducted a study of current experiments in collective bargaining, are adopted here: "History shows that compulsory arbitration simply will not normally work effectively".²²

VOLUNTARY ARBITRATION

A more politically palatable alternative to compulsory binding arbitration, and the concomitant strike ban thereto, is the proposal for an extensive voluntary arbitration system. Under such a scheme the parties (or at least the bargaining agent - ie. the union) have an option to choose either the strike route or arbitration as the ultimate impasse resolution mechanism. In the Alberta private sector such an option is already available. Hence, the proposal here would be to develop strong means to influence the parties to choose the arbitration route. Under the present A.L.A. the parties must contract in writing and notify the Minister of Labour that they have agreed to submit to arbitration in the event of an impasse.²³ Thereafter if the parties fail to settle through direct negotiations, a tripartite arbitration board may be set up to deliver a binding award which is included in the terms of the new contract. To date in Alberta, as well as in Canada (the Federal civil service aside), voluntary arbitration has been utilized by very few bargaining units.²⁴

Private Sector Examples

After the 1973 national rotating strikes in the Canadian railway industry the Hall Report proposed a system of voluntary arbitration for future railway disputes.²⁵ The system was adopted and appears to be working well. One of the major reasons for this success, according to Ed Finn (Information Director for the Canadian Brotherhood of Railway Workers), is that the voluntary arbitration scheme allows the parties to set the criteria within which the arbitrators must make their decisions.

Another major private sector experiment with voluntary arbitration has been operational in the United States steel industry since 1973. In this case the union agreed to submit to arbitration mainly because of the past history of the companies stockpiling before possible strikes. The stockpiling has resulted in either very long stoppages or, if the strike was averted, massive layoffs until the excess inventories were depleted.²⁶ Loss of markets to foreign competition was also a major factor in the decision to accept this system and agree to the no-strike pact at the national level. The agreement does not, however, prohibit "local" strikes over individual plant issues. The extensive local strikes which occurred in the past summer (1977) now threaten the future of the pact.²⁷ If this major experiment does in fact fail, then in the words of I.W. Abel (President of the United Steelworkers of America) "there may never be another chance to establish a long period of industrial peace in the industry".²⁸ Further, it is suggested here, the future of voluntary arbitration contracts in the private sector would be in serious jeopardy.

The Public Sector: P.S.S.R.A.

In the public sector in Alberta, those employees coming under

the federal jurisdiction also have (as mentioned in Chapter Three) a choice between the conciliation-strike route and voluntary arbitration (this is also the case in four of the other provincial jurisdictions²⁹). Under the Federal arbitration scheme in order to prevent usurpation of government authority the scope of arbitral awards is significantly limited.³⁰ This fact, and the slowness of the process, are two of the reasons Barnes and Kelly cite as responsible for the shift of options trend which has resulted in two-thirds of employees covered by the Act now having chosen the conciliation-strike route.³¹

The Anderson And Kochan Study

Anderson and Kochan, in a more recent and much more extensive study of the Federal approach to voluntary arbitration, have statistically shown that the experience has verified the "pessimists" allegations of short-comings of any voluntary arbitration system.³² Their research tested for evidence of three negative effects which arbitration is commonly said to have on collective bargaining. First they looked at the "chilling effect" which results from split-the-difference awards causing more extreme final positions. Next they studied the "narcotic effect" which they define as the increasing reliance on arbitration to settle disputes and the parties thereby avoiding having to make difficult trade-off decisions. Finally the "half-life effect" was studied. This effect comes when unions and employers become more aware, through experience, of the shortcomings of the process and hence become disenchanted therewith. At this point they attempt to circumvent the entire dispute resolution system by looking to some other legal or illegal means of pursuing their interests - ie. strikes or slowdowns. The results verified that after the first four rounds of negotiations under the Act (P.S.S.R.A.) all three effects were apparent.³³

In the first of the bargaining rounds to date under the Act 83.6% of the bargaining units selected the arbitration route whereas in the second only 81.6% chose it. By the third round the figure further dropped to 79.6% and by the fourth the number of bargaining units under the arbitration option had plummeted to only 41.9%. This latest drop in the popularity of voluntary arbitration is explained by Anderson and Kochan as follows:

"...arbitration procedures benefit weaker bargaining units more than stronger units, which are better able to achieve favourable outcomes through economic or political power... By the fourth round, however, most of the differentials in benefits and other contract provisions had been eliminated and any new gains required breaking new ground rather than catching up to other units in the system."³⁴

They are also not overly optimistic about a reversal of this trend away from the voluntary arbitration option:

"It is also quite clear, however, that no administrative or other reform of the arbitration procedure will be successful in enticing those groups with greater bargaining power presently under the conciliation-strike route to switch to the arbitration procedure...bargaining units will continue to choose the impasse route that tends to maximize their bargaining power."³⁵

The strong evidence in this study that, given the choice, more powerful unions will not opt for voluntary arbitration (as is also evidenced by the minimal utilization of same in the Alberta private sector) seems to override the contentions of Carl Stevens. Stevens advocates that the operative value or effectiveness of the strike and voluntary arbitration are closely analogous.³⁶

Stevens On Voluntary Arbitration

It is Stevens' contention that the distinction commonly made between rights arbitration and interest arbitration is one which is based on a "legalistic or quasi-legalistic misconception" of the contractual

nature of rights arbitration. He maintains that the purely negotiational nature of interest arbitration is essentially similar to rights arbitration.³⁷ Stevens argues that so long as interest arbitration is voluntary and the parties can place constraints on the purview of the award, then an ad hoc board which can be invoked by either party on impasse is as effective a threat as the strike in pressuring the parties into a "contract zone".³⁸

Labour's Rejection

This proposition, in light of the foregoing evidence, is considered here to be unsound. Labour is neither philosophically nor pragmatically opposed to the concept of voluntary arbitration, yet it is increasingly avoiding the option. Clearly if the system was in fact equally effective in achieving labour's goals it would indeed be a panacea for industrial strife to which a majority, not a shrinking minority, of bargaining agents would submit. Diminished bargaining power, for other than the few weak unions, is the very reason why many refuse to submit to arbitration and avoid the costs associated with the strike risk. In the words of Barnes and Kelly: "if a system of voluntary arbitration is to retain (or attract) adherents it must be based on something more than the premise that the employee may have some ideological reluctance to strike".³⁹

FINAL-OFFER SELECTION

Final-offer selection is, in reality, merely a modification of the conventional arbitration systems. Stevens first noted the mechanism as simply a more effective criterion for decision making in ad hoc voluntary arbitration.⁴⁰ The scheme goes by many names, including "fixed-choice", "best-offer", "all-or-nothing", and "either-or" arbitration. A more sarcastic title used by its opponents and critics is "Russian Roulette".

As to its mechanics, Cushman describes it as follows:

"In its simplest form, the "final-offer" technique is one which requires that the arbitrator in an interest dispute choose between the employer's final proposal and the union's final proposal. The theory which underlies the "final-offer" technique is that each party will substantially soften its demands and make concessions in the course of bargaining so that its offer will be held to be the more reasonable one in the event of arbitration."⁴¹

Variations in such schemes include item by item decisions (as opposed to total package awards), decisions only on those issues still in dispute at impasse, two "final-offers" instead of one, tripartite boards instead of a single arbitrator, and special (as set out by the parties) selection criteria instead of general principles.

According to Long and Feuille, proponents of the system, the final-offer technique functions just like the strike-threat system:

"In other words, a successful final-offer procedure is one that is not used; one that induces agreement during the proceedings; or, using a less rigorous definition of success, one that substantially narrows the area of disagreement. And when the procedure is used, the function of the arbitrator is to operationalize its potential costs by deciding against the party that advocated the less reasonable offer(s)."⁴²

The authors do, however, note that there are at least three valid criticisms of the system: 1) the need for bargaining sophistication in the parties; 2) the lack of face-saving quality in final offers as opposed to conventional arbitration; and 3) the almost complete elimination of the arbitrators' discretion.⁴³

The Wisconsin-Michigan Experiments

The most comprehensive experiments with final-offer arbitration have been undertaken in the United States, specifically in the "public safety" sectors (eg. police and firemen) in Wisconsin and Michigan.

Stern and Rhemus et al. have recently released a book which summarizes an

in-depth study of the mechanism in these jurisdictions.⁴⁴ Before the research had been complete Rhemus stated in a paper that:

"Perhaps the most noteworthy conclusion resulting from our investigations thus far is that final-offer, contrary to the original hypothesis, does not seem to significantly⁴⁵ force the parties to find their own settlement."

The book, subsequently released, does not speak much better for the system. Nevertheless, the authors clearly favour it as the most appropriate mechanism in many circumstances (eg. essential services). The authors, in their final conclusion, admit that "the evidence is very slim", but go on to assert that "it appears that final-offer-by-package brings the parties closer together" than final-offer-by-issue and conventional arbitration.⁴⁶

Criticisms By Various Authors

Critics of final-offer arbitration make no such attempt to find efficacy in the scheme. Cushman argues "the simple final-offer technique is quite unrealistic. In practice, it might well make for a totally unacceptable arbitration award and never serve to narrow the issues at the bargaining table."⁴⁷ Munro claims the system simply ignores the realities of bargaining trade-offs and the the "winner-takes-all" outcome simply serves to breed distrust in the system and frustration in general.⁴⁸

It is Joseph Grodin, however, who hints at the most critical problem with final-offer arbitration: "an arbitrator would not be free to compromise between the positions of the parties but would be required to accept one position or the other in toto."⁴⁹ In other words, an arbitrator must choose between the two parties' final offers notwithstanding he may feel that neither is an appropriate or acceptable settlement point. The Stern et al. study relates the result of a questionnaire sent to Michigan arbitrators, who rule under a final-offer scheme, which reveals this

is in fact a very real problem with the system: "There was a general agreement that final-offer would result in awards that would not be as equitable as those under conventional arbitration."⁵⁰

THE NON-STOPPAGE STRIKE

Early Proponents

The concept of the non-stoppage strike, also known as the "semi-strike" or "statutory strike", first came to prominence as the result of an article by Marceau and Musgrave published in the Harvard Business Review in 1949. The authors were concerned with the disruptions of essential service strikes and argued that:

"Aside from the inconvenience which the public suffers, the only direct result of a strike is to inflict an economic loss on both the company and the workers.... If, therefore, a system could be devised which would permit the union to inflict the identical loss upon the company without a work stoppage the bargaining function would be preserved, yet the conflict with the public interest would be avoided... The impact of the bargaining process would have been restricted to its proper sphere, which is the economic warfare of the two parties."⁵¹

Their scheme involved the three basic conditions common to all subsequent non-stoppage proposals: 1) company operations continue normally; 2) the company profits, or at least a portion thereof, are placed in a trust fund; and, 3) the workers' pay, or at least a portion thereof, is withheld and placed in the trust fund. According to the Marceau and Musgrave plan this would continue until settlement, at which time they recommended the fund be used for retroactive repayment to the parties.

Goble, who took up the idea in an article which appeared the following year, was much less lenient. He not only proposed that executives also have their salaries proportionally cut to pressure settlement, but also argued that every ninety days (if the parties had not reached settle-

ment) the accumulated funds in the trust account be permanently forfeited.⁵³ The idea did not catch on. In October of 1960 the Miami Transit Company and the bus drivers' union, as an impulsive last ditch effort, gave the scheme a try in order to avoid the wrath which a public transit work stoppage brings. The company was to supply fuel and maintenance funds and the workers were to drive without pay; passengers were to ride for free (complete revenue loss). The experiment lasted only four days. The company withdrew its agreement to the plan when it was found that workers were accepting "tips" from riders.

McCalmont As A Supporter

Two years after this failure (1962) David McCalmont wrote an article which again championed the non-stoppage strike, rejecting the Miami experience as the result of being too spontaneous.⁵⁴ McCalmont's paper was very extensive but the practicality of some of the "advantages" of the scheme which he argues are open to question as to their probative value. For example, his "pros" for non-stoppage strikes include: the unions avoid the possibility of a backlash from membership if the strike goes badly; improves education and public services (he also proposed that the money withheld in the trust fund be donated to schools and community centres); and, avoids the danger of government intervention and compulsory arbitration of the dispute.⁵⁵ In general McCalmont's paper lacks a convincing argument to overcome the many problems with such a system.

The Sosnick Model

Stephen Sosnick, in 1964, published a more imposing case for the non-stoppage system,⁵⁶ which he describes as "the substitution of paired forfeits for work stoppages". Sosnick recognized that labour and management were not likely, in general, to mutually agree to such a scheme

and that it would therefore have to be implemented through court injunctions or legislation.⁵⁷ However, he argued that it should be imposed only "where a work stoppage is already intolerable and where its relative burdens therefore may already be largely irrelevant". In other words, Sosnick saw the practical value of the non-stoppage strike as limited to that of an emergency dispute resolution weapon. He proposed that the employers' forfeit simply be equal to the aggregate of that of the employees, and therefore does not even attempt to approximate the parties' relative burdens from a stoppage. As to the proportion of wages to be forfeited, he proffers that:

"...the desiderata are that it be low enough to give both sides reason to prefer the forfeits to a walk-out, and at the same time be large enough relative to the amounts or issues in dispute to press both sides to settle."⁵⁸

The range he discusses is zero to one hundred percent, with a preference of around forty percent.

The Sosnick model would see the fund accumulation cut off each week that a settlement is not reached, proceeds to go to the government. After 140 days without settlement he suggests the parties again be given the right to engage in a "normal strike" or work stoppage. This latter feature suggests that even Sosnick had doubts of the non-stoppage scheme's ability to coerce a settlement.

The Dunbar Furniture Company Experiment

Chamberlain, who once advocated the non-stoppage strike, wrote an article which discussed what has become perhaps the most enduring experiment with the scheme - that of the Dunbar Furniture Company of Berne, Indiana, and the Upholsterers' International Union of North America.⁵⁹ Made in May 1968, reaffirmed in 1968, and still in effect at least as of

1975,⁶⁰ the agreement provides for production as usual during a labour dispute. One-third of the employees' earnings go into a "Strike Work Trust Fund" and an amount equal to the workers' aggregate contribution is paid into the fund by the company. If the dispute is settled in the first four weeks all the money is returned to the parties; if within the next two weeks, 75% is returned. However, if agreement does not come until the seventh week, only 50% is returned, and thereafter in the eighth and final one week period at most 25% will be returned. This graduation of refundable contributions is an incentive for early settlement. If after the eight weeks pass no settlement has been reached all the money is forfeited and, in keeping with the Sosnick model, an "old fashioned strike" (their words⁶¹) can be called. Money permanently forfeited goes to community programs.

Practical Deficiencies

The non-stoppage strike does appear to be working for Dunbar and its employees, but it is clearly an isolated example and not one on which to base comprehensive labour policy. Even its earliest proponents, Marceau and Musgrave, recognized serious difficulties with the scheme. They cited problems with enforcement and the fact it requires parties with a very mature and objective approach to labour relations as but two of these drawbacks. More serious is the effect of continued operations on the duration of strikes. As Marceau and Musgrave hint, "there is some reason to believe that the dispute might last longer under a statutory strike than under a work stoppage".⁶² McCalmont also recognized this problem:

"Another possible disadvantage as seen by unionists is that the employer will suffer an impairment of income which is only half as great as that which would be caused by a conventional strike. Thus the employer

would be likely to endure longer before making concessions. This is undeniable..."⁶³

He makes a rather weak effort at counterbalancing this defect by arguing that the employees, being on half pay (in his model), would also be able to stand the increased duration better.

It is suggested the non-stoppage scheme is more an attempt to mask labour strife rather than trying to solve or reduce it. Some other serious defects with the non-stoppage system, a few of which were recognized by various authors are that: 1) it may well be difficult to keep workers on the job at half-pay; 2) the cathartic effect of a stoppage on pent up emotions is absent; 3) continuance of "face-to-face" interaction of rank and file and management during a dispute could lead to further deterioration of relations; 4) the employer's plant and equipment are more readily susceptible to sabotage; and, 5) the public, supplier, and customer pressures, which also coerce settlement in a normal strike, are absent.

SINGLE-TEAM BARGAINING

The final alternative to be considered here is not really a replacement to the strike at all. In fact, it fully contemplates the strike threat should the parties fail to agree. Single-team bargaining is more an approach to negotiations to avoid impasse than an impasse resolution mechanism per se. It is an attempt to remove the adversarial context of collective bargaining.⁶⁴ As a new innovation, first tried in Alberta (to avoid a strike at Labatts' Edmonton plant in 1972), it deserves at least brief mention perhaps as being representative of some of the less prominent proposals for achieving labour peace.

Thomas Crossman, Personnel Director for Labatts Breweries of Canada Limited, describes the gist of the scheme as "defusing the confron-

tation mood of contract bargaining".

Crossman is the creator of the single-team system which, in fact, amounts to little more than union and management representatives sitting around in a casual setting (as opposed to a formal bargaining table arrangement) discussing contract issues. None of the statements made in these discussions are binding and none of the representatives refer to their respective sides per se. Any agreements reached are later reduced to writing and signed to give them "legal" effect in the new contract once it is settled.

Theory And Process

The talks begin with agreements on a general range within which the final settlement will fall (ie. parameters of the "contract zone" are established), and then specific figures etc. are discussed later. In so doing it is hoped that the "things done for show and for the sake of what is expected" (ie. tough bargaining and tough talk) will be replaced by a solution system based on cooperation. By removing the bilateral aspect of negotiations the 'win-lose' barrier also disappears as with a single-team everybody (theoretically) wins on settlement.

Crossman argues that the conventional demands and offers system hardens positions before the parties even commence negotiations. The single-team approach is one of joint "problem solving" thus creating a more flexible atmosphere in which to seek settlement. Representatives discuss "problems" rather than demands and offers and hence, purportedly, agreements flow much more freely. In support of this concept Weinstein notes that: "in 10 years the company has been struck twice, including one wildcat walkout. Considering the company has 35 contracts with the union, and contracts are renegotiated every year or two, it is an enviable

record of industrial harmony."⁶⁵

Bottom Line: Strikes Remain

So much for the 'pros', now let us consider the problems. The first, and most serious, defect in the system is that, as Crossman himself admits, it is not effective in settling monetary issues - the subject over which, as noted in Chapter Two, most strikes are called. At best, he confesses, the single-team approach helps establish "a mood of cooperation, trust and respect" which helps economic talks go more smoothly. Secondly, the concept bases on the premise that workers are employees of the company first, and union members second.⁶⁶ Clearly it is a proposition which it would be difficult to persuade most unions to concur with. Thirdly, the Labatts' approach contains a dose of "continuous bargaining" with a policy of ironing out problems to prevent them festering into strong feelings at negotiation time. As such, it requires a commitment to a significant degree of participatory or joint consultation management.⁶⁷

It is questionable as to whether the requisite level of "sophistication" in industrial relations is present in the majority of Alberta's "bread and butter" type labour-management relationships. Further, the single-team bargaining approach has only been in operation for five of the ten year period he cites. Second, in the 1975 contract year a strike was barely avoided at the Edmonton plant by a twelfth-hour settlement. Finally, rather ironically just after the Weinstein article was published (1976) the 135 United Brewery Workers of the Edmonton bargaining unit, which helped pioneer and develop the single-committee scheme, picketed the Labatts Brewery in a strike which lasted 33 working days and cost some 4,455 man-days lost.⁶⁸

SUMMARY

This survey of alternatives to the traditional labour strike has looked at compulsory, voluntary, and final-offer arbitration as well as the non-stoppage strike and the recent proposals for adoption of the single-committee approach. Compulsory arbitration, though popular with those who will not tolerate strikes, is particularly distasteful in the free democratic setting as it amounts to, as the Webbs put it, "fixing of wages by law". It usurps the freedom of choice of both labour and management. Further, if Australia is any example (and note they have had the system since the late 1890's), compulsory arbitration cannot be imposed on those who have once had strike rights with the expectation it will promote labour peace. The system also appears to have a deteriorative effect on the collective bargaining process itself.

Studies of voluntary arbitration, as it is practiced in the Federal civil service, reveal strong evidence to support arguments that it leads to "chilling", "narcotic", and "half-life" results. Private sector data shows very minimal and insignificant use of the voluntary arbitration option set out in the A.L.A. Generally only weaker unions will take this route. Clearly the experiments to date with the system have not been encouraging and there is little foreseeable hope that voluntary arbitration can successfully be promoted in the near future.

Final-offer selection has intriguing prospects with its risk similarities to the strike-threat. However, although it may avoid the "chilling" effect of conventional arbitration, the studies so far do not show it to be any more effective in coercing the parties to come to their own settlement. A valid point can also be made that it ignores the trade-off nature of the negotiation process and forces arbitrators to make

awards they may consider inequitable in the circumstances. Certainly the "winner-takes-all" aspect reduces acceptability of the award to the losing party.

The non-stoppage strike would indeed save public, supplier, and customer inconveniences and losses. Unfortunately administration is difficult and getting the parties to accept and comply with such a system seems a rather utopian quest. Even if workers would continue at zero or half-pay, the day to day confrontation during a dispute could well make matters worse. As with arbitration, this system fails to provide a safety-valve for natural and inevitable pent up emotions. Not surprisingly, there has been very little practical interest shown in the non-stoppage alternative, and even less success with it. Single-team bargaining could be described as a precursor to co-determination and its effectiveness depends on the same kind of maturity and sophistication in labour relations. As was noted in Chapter One, this will not be found to any significant extent in Alberta for some time to come.

The words of Bryce Mackasey, at the time Federal Minister of Labour, are appropriate to the conclusions here:

"No I am not much impressed by the search for basic alternatives. I doubt there are any. I know of none that would look both feasible and attractive in the Canadian setting at the present time...in a very fundamental way we must live with a system of industrial relations that has its foundations embedded in Canadian soil. And if we are looking for the means to improve it, we must rely largely on Canadian materials and parts."

To this add the contention of Crispo that:

"Strikers are not only part and parcel of the Canadian collective bargaining process; they are also part of the total socio-economic political framework within which Canada operates. This is a fact that should be emphasized above all others, for it is one about which

the public needs constant reminding if we are not to precipitate purported answers that cause more problems than they solve."

The scene is now set for the following chapter. It has been argued that the alternatives to the strike discussed here, and the others of which they are a sample, are inappropriate as solutions to present problems of labour unrest in Alberta, and in Canada. We need, as Mackasey notes, a solution which substantially consists of Canadian parts, and, as Crispo argues, it must also recognize that, at least for the time being, the traditional labour strike is here to stay. What is presented in the next chapter is a proposal to restore the former efficacy of the strike in ensuring minimal levels of labour strife. This it is contended, satisfies the constraints outlined by both Mackasey and Crispo.

FOOTNOTES

CHAPTER VI - ALTERNATIVES TO THE STRIKE

1. The Firefighters and Policemen Labour Relations Act, R.S.A. 1970, c.143, s.4, 9-15; as discussed in Chapter Three hereto.
2. The Public Service Employee Relations Act, S.A. 1977, c.40, s.46-60, 93; as discussed in Chapter Three hereto.
3. Walker, Kenneth F., The Role of Government in Industrial Relations, (1968), p. 202; Isaac, J.E., Compulsory Arbitration in Australia (Task Force Study No. 4), (1968), p. 13.
4. Ibid., (Walker) p. 296; (Isaac) p. 17.
5. Isaac, op. cit. (see note 3), p. 23.
6. Ibid., p. 27.
7. Walker, op. cit. (see note 3), pp. 203-204.
8. Webb, Sydney and Webb, Beatrice, Industrial Democracy, (1920 Reprint), pp. 244-245.
9. Rhemus, Charles M., "Legislated Interest Arbitration", Industrial Relations Research Association, Proceedings of the Twenty-Seventh Annual Winter Meeting - 1974, pp. 307-314.
10. Webb, op. cit. (see note 8), pp. 228-230.
11. Hines, Robert J., "Mandatory Contract Arbitration - Is It a Viable Process", Industrial and Labor Relations Review, Vol. 25, No. 4 (July 1972), p. 533.
12. Ibid., p. 544.
13. Stevens, Carl M., "Is Compulsory Arbitration Compatible With Bargaining?", Industrial Relations, Vol. 5, No. 2 (February 1966), p. 42.
14. Ibid., p. 49. Bruno Contini seriously questions some of the premises of Stevens' article (especially uncertainty in criteria and awards) in the discussion section of Industrial Relations, Vol. 6, No. 1, pp. 111-114. Stevens' reply (pp. 114-116) does little to rebut these criticisms.
15. Munro, J., "The Alternatives to Confrontation are the Responsibility of Unions and Management", Labour Gazette, Vol. 74, No. 4 (April 1974), pp. 258-259.

16. Rhemus, op. cit. (see note 9), p. 314.

17. Thompson, Mark, and Cairnie, James, "Compulsory Arbitration: The Case of British Columbia Teachers", Industrial and Labor Relations Review, Vol. 27, No. 1 (October 1973), p. 17. As was noted in Chapter One (in note 3 thereto) Peter Feuille questions their positive results in Vol. 28, No. 3, pp. 432-438.

18. Crispo, John, "Strikes and Their Alternatives in Essential Services", Labour Gazette, Vol. 74, No. 9 (September 1974), p. 621.

19. Edmonton Journal, Friday, May 13, 1977, pp. 1,3.

20. Crispo, op. cit. (see note 18), p. 622.

21. "Face saving", a problem which even Stevens (op. cit. (see note 13), p. 49) admits is unavoidable, is when representatives avoid having to make decisions on trade-offs of conflicting interest factions within their unions by refusing concessions and letting the arbitrator be the scape-goat who rules which interests win and lose. Munro (op. cit. (see note 15), p. 259) also notes this problem.

22. Cushman, Bernard, "Current Experiments in Collective Bargaining", Industrial Relations Research Association, Proceedings of the Twenty-Sixth Annual Winter Meeting - 1973, p. 136.

23. A.L.A., s.135-137.

24. Munro, op. cit. (see note 15), p. 258. In Alberta, Mr. H. Libke of the Conciliation and Mediation Services Branch of the Board of Industrial Relations, Alberta Department of Labour, informs that since A.L.A. sections 135-137 were instituted in late 1973 there have been only six applications for its provisions of which only two have gone right through the entire process as set out. Libke suggests perhaps one reason why unions have so adamantly avoided the process is that their constitutions may preclude delegation of the ultimate accept/reject decision to other than the membership itself.

25. For an overview of this report see Finn, Ed, "Are There Workable Formulas For Ensuring Industrial Peace", Labour Gazette, Vol. 74, No. 4 (April 1974), pp. 263-274.

26. Mahoney, William, "In A Free Society There Are No Alternatives to the Right to Strike", Labour Gazette, Vol. 74, No. 7 (July 1974), pp. 467-471. Mahoney is the Canadian National Director of the United Steel Workers of America.

27. Edmonton Journal, Tuesday, August 2, 1977, p. 59. The article notes that some 20,000 steelworkers went on strike August 1, and that steel industry lawyers have filed suit charging the union (U.S.A.) with breach of contract.

28. As quoted in Baer, Walter E., Strikes: A Study of Conflict and How to Resolve It, (1975), p. 190.

29. Parekh (P.S.A.C. Economist) has conducted a study of current labour legislation in Canada which revealed that British Columbia (since 1973), Saskatchewan (since 1944), Yukon Territories (since 1970) and New Brunswick (since 1969) all have a strike-conciliation option in their legislation covering their public employees; see Parekh, Navin, "Voluntary Arbitration in Canada: Five Public Service Models", Labour Gazette, Vol. 74, No. 12 (December 1974), pp. 862-866. For the interested reader the respective pertinent Acts and sections are: The Public Service Labour Relations Act, S.B.C. 1973, c.144, s.17; The Trade Union Act, S.S. 1973, c. 137, s.2(g), 24-25; Public Service Staff Relations Ordinance, Revised Ordinances of the Yukon Territories, c.P-11, s.52; and, Public Service Labour Relations Act, R.S.N.B. 1973, c.P-25, s.66-77.

30. Public Service Staff Relations Act, s.63-76; specifically s.70.

31. They cite, as an example of the slowness, the case of government economists, the arbitration award for whom took some 413 days to complete. Barnes, L.W.C.S., and Kelly, L.A. conducted a study on the Federal system at Queens University. A brief overview of their report appears in Labour Gazette, Vol. 76, No. 4 (April 1976), p. 200.

32. Anderson, John C., and Kochan, Thomas A., "Impasse Procedures in the Canadian Federal Service: Effects on the Bargaining Process", Industrial and Labor Relations Review, Vol. 32, No. 3 (April 1977), pp. 283-301.

33. Ibid., pp. 291, 293.

34. Ibid., p. 292.

35. Ibid., p. 299.

36. Stevens, Carl M., "The Analytics of Voluntary Arbitration: Contract Disputes", Industrial Relations, Vol. 7, No. 1 (October 1967), pp. 71-72.

37. Ibid., p. 74.

38. Ibid., pp. 71-72.

39. Barnes and Kelly, op. cit. (see note 31), p. 200 (brackets added).

40. Stevens, op. cit. (see note 13), p. 44.

41. Cushman, op. cit. (see note 22), p. 134.

42. Long, Gary, and Feuille, Peter, "Final Offer Arbitration: 'Sudden Death' in Eugene", Industrial and Labor Relations Review, Vol. 27, No. 2 (January 1974), p. 202.

43. Ibid., p. 197.

44. Stern, James, L., Rhemus, Charles M., Loewenberg, Joseph J., Kasper, H., and Dennis, Barbara D., Final Offer Arbitration, (1975).
45. Rhemus, op. cit. (see note 9), pp. 312-313.
46. Stern et al., op. cit. (see note 44), pp. 184-185.
47. Cushman, op. cit. (see note 22), p. 134.
48. Munro, op. cit. (see note 15), p. 260.
49. Grodin, Joseph R., "Either-Or Arbitration for Public Employee Disputes", Industrial Relations, Vol. 11, No. 2 (May 1972), p. 263.
50. Stern et al., op. cit. (see note 44), p. 139. The authors attribute this in part to arbitrators perceiving their own judgement as more equitable than an imposed choice.
51. Marceau, LeRoy, and Musgrave, Richard A., "Strikes in Essential Industries: A Way Out", Harvard Business Review, Vol. 27, No. 3 (May 1949), p. 287.
52. Goble, George W., "The Nonstoppage Strike", Labor Law Journal, Vol. 2, No. 2 (February 1951), p. 105.
53. Ibid., p. 109.
54. McCalmont, David B., "The Semi-Strike", Industrial and Labor Relations Review, Vol. 15, No. 2 (January 1962), pp. 191-208.
55. Ibid., pp. 195-197. McCalmont even goes so far as to suggest that school boards and community officials be encouraged to give ceremonies of tribute to employers and employees for donations from the penalty funds in order that they will feel less antagonistic towards the system (see p. 207).
56. Sosnick, Stephen H., "Non-Stoppage Strikes: A New Approach", Industrial and Labor Relations Review, Vol. 18, No. 1 (October 1964), pp. 73-80.
57. In the United States imposition of such is of questionable legality in light of constitutional guarantees.
58. Sosnick, op. cit. (see note 55), p. 76.
59. Chamberlain, Neil W., "Strikes in Contemporary Context", Industrial and Labor Relations Review, Vol. 20, No. 4 (July 1967), pp. 602-616; the non-stoppage strike is discussed at pp. 612-613.
60. Baer, op. cit. (see note 28), p. 183. Appendix Six, pp. 235-244, contains a complete copy of the Dunbar "Strike Work Agreement".
61. Ibid., p. 237.

62. Marceau and Musgrave, op. cit. (see note 50), p. 291.

63. McCalmont, op. cit. (see note 53), p. 207.

64. The "single-team" approach, as discussed here, is outlined in a short paper by Ted Weinstein, an information officer with Labour Canada; see Weinstein, T., "Single-Team Bargaining", Labour Gazette, Vol. 76, No. 5 (May 1976), pp. 250-252.

65. Ibid., p. 252.

66. Ibid., p. 250.

67. Ibid., p. 251.

68. Source: Unpublished data from the Research Service Branch, Alberta Department of Labour, entitled "Strikes and Lockouts - Alberta - January 1, 1976 to December 31, 1976, p. 2.

69. Mackasey, B., "In Need of Repair But Basically Sound", Labour Gazette, Vol. 71, No. 1 (January 1971), p. 24 (a reprint of Mackasey's address to the National Industrial Conference Board, October, 1970).

70. Crispo, op. cit. (see note 18), p. 628.

CHAPTER VII

REVIVIFICATION OF STRIKE IMPACT: STAGE ONE

OPENING COMMENTS

At the onset of this paper it was stated that the approach taken here was to be diagnostic and prescriptive. Chapters Two through Six have been the diagnostic portion. It is hoped that these chapters have shown that the role of the strike in the negotiation process is to coerce compromise by making the alternative to further concessions appear more costly. Further, the chapters attempt to demonstrate that the decline in the effectiveness of the strike-threat in ensuring labour peace has been, at least in part, due to the "insulating tactics" which have been undertaken by the parties. The diagnosis thus becomes that the deterioration of strike effectiveness, as evidenced by the generally rising incidence and increasing average duration of stoppages, is due to the fact that the economic impact is no longer as significant because the parties have acted to avoid it. The threat of a strike is less potent since the cost of disagreement has declined relative to that of the cost of agreement.

Given this diagnosis, and in light of the argument of the previous chapter that alternatives offered to date are inappropriate, this chapter outlines stage one of the proposed prescription which, it is argued, will restore the past efficacy of the strike-threat system. The proposal offered is intended to revitalize the strike threat. The scheme maintains the entire industrial relations format under which we now

operate, and simply offsets the insulating tactics such that the parties are again faced with the threat of serious economic consequences should they fail to settle. A simple and pragmatic solution which, in the words of Hameed quoted earlier (see Chapter One), serves to "reinforce the role and function of the strike in a way that our system of free collective bargaining is preserved with as little inconvenience to the public as possible."

It is argued that the solution offered will restore the threat in the system and thereby reduce the number of actual strikes. Further, it will also serve to shorten the average duration of strikes through increasing the costs of continued disagreement once a strike has begun. Should these economic pressures be insufficient to induce settlement of a stoppage which is particularly disruptive, a second stage in the scheme, as outlined in the chapter which follows, would see government intervention to end the strike. Such intervention would not occur, as is now the case, on an ad hoc decision of the Cabinet, but rather only when the costs of the stoppage, weighted by the essentiality of the disrupted service, outweigh the benefits to be gained by its continuance. The mechanics of the first stage of the proposal are outlined below, but first a brief review of the negotiation models and the role of the strike therein to emphasize the focus of the solution offered.

COST-BENEFIT BARGAINING THEORY REVISITED

In Chapter Two the negotiation models of Chamberlain, Pen, Stevens, and Mabry were examined. It was noted that all of these conceptualizations have at least one element in common: that the underlying trade-off at issue in each is the cost of avoiding conflict by conceding

to the other side's demands versus the cost of refusing to concede and as a result thereof engaging in conflict. Simply put, in each of the models the pressure which coerces compromise offers is that the alternative to compromise is more costly. If the cost of refusal to compromise is less than the cost of compromise then, according to the theories, the force which ensures settlements will be insufficient and conflict will arise.

Taking the model offered by Chamberlain, if we consider CMA (cost to management of agreeing to the union's demands) and CUA (cost to the union of accepting management's offer) as relatively fixed in respect to a given issue,¹ then we can focus on the effects of changes in CMR (cost to management of refusing the union's demands - ie. taking a strike) and CUR (cost to the union of refusing to accept management's offer - ie. calling a strike). Under these circumstances (fixed CMA and CUA) if either CMR or CUR decrease, then that party's bargaining power is consequently increased. However, if both CMR and CUR decrease below CMA and CUA in relatively proportional quantum, then the strike becomes the less costly alternative and rationally, in theory, a stoppage will commence. The strike would then continue until such time as CMR or CUR rises above its alternative (CMA or CUA).

Remember, for a moment, the discussion in Chapter Five where insulating tactics were reviewed. It was noted that such factors as automation, technological advances, stock piling, and strike insurance serve to decrease CMR, while factors like large strike funds, consumer credit, private savings, and employed spouses tend to decrease CUR. Given a constant CMA and CUA, then in theory (and in fact - as the statistics indicate) the more prevalent these factors, the more strikes that will be experienced. Simply, the cost of disagreement declines

relative to that of agreement and conflict becomes the rational choice. If the role of the strike-threat system, and the strike per se, is to make the alternative to agreement the more costly option, then the way to ensure that the role is achieved is to ensure that stoppages will indeed put severe economic pressures on the parties - ie. ensure CMR and CUR are greater than CMA and CUA.

INCREASING THE COST FACTOR

If it is agreed that increasing CMR and CUR will indeed make the strike option even less desirable, thereby reducing its use through increasing the effectiveness of the threat, then the next issue becomes developing a method by which to ensure that CMR and CUR generally remain higher than CMA and CUA. It is suggested that the Hameed model for "Responsive Bargaining"² offers the means to achieve this. Through the instrument of a monetary penalty which would be imposed upon the parties should they fail to settle and indulge in a strike, the perceived cost of a stoppage can be manipulated such that the parties will, in most cases, consider disagreement too costly. The amount of such a threatened penalty would be determined principally on the criteria of offsetting the protective measures the respective parties have undertaken. That is, the penalty would be calculated to neutralize the effect of the parties' insulating tactics. Simply put, through the threat (or actual imposition in the event of a strike) of monetary penalties the effects of insulating tactics can be offset such that pre-tactic CMR and CUR are restored. As a consequence the effectiveness of the strike threat is reinstated. With the potency of the strike threat and the impact of actual stoppages restored, strike activity and average duration should return to more normal levels.

The proposed scheme would not only effect revivification of strike and strike-threat effectiveness; it also has the benefit of compensating the public for inconveniences it must suffer as a result of a strike. This would remove, at least in part, one of the major diseconomies of the strike system. The equitable result derives from the fact that monies received from penalty levies on participants (both labour and management) in actual strikes would flow into the Province's general revenue fund. The public at large is thereby indirectly compensated through tax subsidization. Although the compensatory effect is treated here as a pleasant by-product of the penalty scheme, it was in fact one of the major rationales Hameed argued for the mechanism when he developed it. In his words:

"The law which safeguards the workers' right to strike does not, at the same time, protect the freedom of the public to obtain goods and services while the strike is on. Conceptually and philosophically this is an untenable position. If the law must guarantee complete freedom for the strike and lockout it must, at the same time, guarantee corresponding compensation to the public for having suffered inconvenience and hardship during the strike."⁵

Notwithstanding that the priorities in the attributes of the system differ, the mechanics of the first stage of the revivification scheme proposed here follow closely, with a few modifications, the basics of that outlined for "Responsive Bargaining" in the Hameed paper. In passing it might be noted that the proposition of monetary fines being levied against protagonists has been suggested by other authors.⁵ However, none were found who went so far as to propose an actual plan for its implementation as does the Hameed paper. Unfortunately, since such a scheme has never yet been experimented with, the suggested effects can only be evidenced in theory. Nevertheless, there is evidence from Australia that the

threat of financial sanctions indeed may reduce incidence. Isaac has stated "...the mere existence of these provisions (fines) and the likelihood of their use could well have been a factor in reducing the incidence of strike action".⁶ Later he also suggests that such fines have decreased the duration of strikes once they occur.⁷ If the analogy between the systems is acceptable, then it can be argued there is some practical evidence as to the efficacy of stage one of the scheme being proposed.

THE MECHANICS OF STAGE ONE

As noted in Chapter Three, the Alberta Labour Act provisions dealing with strikes end at section 134 with rules regarding picketing. Thereafter there are no statutory procedures to ensure speedy settlements except where the stoppage is designated as an emergency dispute and sections 163-165 are applied. The scheme offered here seeks to fill this void and at the same time augment the threatened costs in the strike-threat system and thereby, hopefully, avoidance of actual strikes. The outline which follows is geared towards the private sector Act (A.L.A.) as it covers the majority of Alberta employees. A few more of the details of the provisions of the entire scheme may be found in Appendix A in the legislative outline presented there.

A Strike Mediation Board

At the same time either or both the parties to a dispute in collective bargaining negotiations refer the matter to the Minister (of Labour) and request him to appoint a conciliation commissioner (s.104) each party will be required to nominate a representative to a Strike Mediation Board (SMB). The two nominees will then select a third person as chairman. The tripartite board will then, after performing certain

information gathering duties mostly related to the second stage of this proposal, sit in limbo until such time as a legal strike is actually called. If a settlement is reached without a strike the SMB is automatically dissolved. However, if a strike is in fact called the parties must notify the chairman of the SMB at the same time notification of intention to strike is served on the firm (two working days before the actual stoppage can legally occur - s.125(1)(c)).

At some point within three days of the commencement of the strike the SMB will begin a daily schedule of meetings with the parties in which an attempt will be made to mediate a settlement. The first three days or less are exempt from the provisions to allow the cathartic effect of a strike to be achieved.⁸ The second function of the SMB is information communication. The SMB would, each day of the strike, inform all affected parties (including workers and shareholders via newspapers) the total accumulated losses from the strike to date by workers and the company respectively. In addition, the parties would also be told the period of time it will take to recoup losses accumulated to that date based on the premise that that party is totally successful in outstanding demands were the strike to conclude that day. The third function of the SMB is to set out, at the beginning of each day, an amount which the parties must pay as a penalty for engaging in the strike (which also compensates the public for the inconvenience thereof). The three functions are more fully explained below.

The Mediation Function

The mediation function of the SMB fills part of the gap in the present A.L.A. referred to earlier. Under the scheme proposed the parties will be compelled by law to meet daily and attempt to resolve the dispute

with the aid of SMB mediation. This will end the wasteful practice of negotiation break-offs where parties simply do not bother to meet, some times for weeks on end, while a strike drags on. Forcing the parties together daily makes them continually face the issues. The effectiveness of this will be heightened as a result of the information and penalty levy of the second and third SMB functions which will be outlined at the beginning of each daily session. Of course there may well be times when forced continued bargaining will have an adverse effect on the dispute. In such cases it will be in the SMB's discretion to adjourn the meeting for the day. Adjournment could be continued over a short period, but with the stipulation that negotiators must be present each day when the recoupment and penalty figures are presented (functions two and three of the SMB). It is argued that continually bringing the striking parties together, revealing the costs of procrastinating settlement, and mediation of negotiations will go a long way to aid dispute settlement. Certainly it will be a vast improvement over simply sitting back and letting strikes stretch on, often without even any plans for further negotiations. The psychological effect on negotiators of having to daily face the issues may in itself go a long way in shortening a dispute.

The Loss Recoupment Calculation

In Chapter Two an example of strike costs to the worker was offered. It showed that a two week strike over a two percent wage increase on a six dollar per hour base which ends in management capitulation costs the worker \$480.00 in lost wages. It would take him 1.9 years to recover that based on his marginal gain from the strike. Although the example is overly simple, it illustrates in type the calculation which the SMB would make. It is argued that if both sides are daily made aware of how long

it will take them to recover losses sustained to that point even with total success, there will be a greater tendency to strive for settlement. This aspect of the scheme has been added to the Hameed model as a result of a discussion with striking workers. The reaction of the workers to a rough calculation as offered in Chapter Two, modified to their situation, was much stronger than expected. All became much less adamant about the benefits they would get from the stoppage. The sample was small, but it is argued that the effect of the information is fairly predictable. At the very least this function ensures that the parties are well aware of the costs of the dispute, and as a result the efficiency of the threat, as illustrated in the negotiation models, is increased. As mentioned, the SMB recoupment calculation would include not only total losses to date, but also the length of time it will take to recover those losses assuming total success by the respective party.

At first glance it appears the information will be of more effect on union members than on management. Management is typically much more aware of profit-loss calculations than the average worker. However, it is doubtful many companies calculate a recoupment period. Even so, being faced daily with the hard facts just before negotiations commence will no doubt be of significant impact. Further, through the media shareholders will be able to learn the loss situation. Hence there will be pressure on the executive to settle from that source.

The Quantum Of The Monetary Penalty

The third function of the SMB - to levy the monetary penalty - is very important to the revivification scheme. It is certainly the most innovative, and is probably the most controversial aspect of the proposal being offered here. It is to be remembered that the penalty levy is

intended to offset the negative effects of insulation tactics on the strike system. The penalty should also reflect the reasonableness of the stand of the respective parties. That is, it must be keyed to culpability for the stoppage. Hence, in setting the daily dollar amount of the penalty for each party the SMB would consider two criteria: 1) the extent of the present economic impact of the strike on the respective parties; and, 2) using the conciliator's recommendations (or, if the second step was used, the conciliation board report) as a benchmark, the differential between the settlement level therein and the last offer of the respective parties. The first criterion aims specifically at offsetting any insulation tactics undertaken by the parties. For example, if a firm is participating in a strike insurance scheme the benefits, or a part thereof, can be counterbalanced by an appropriate levy. The same holds for strike-pay benefits which are overly generous, revenues from operating a struck plant, etc.

It will be the duty of the SMB to identify sources reducing the impact of the strike and to compensate for them in its levies. This it must do without interfering with or changing significantly the relative bargaining power of the parties. The task will not be easy, especially in respect of the striking employees, as the parties will no doubt seek to secret their cushion sources. Precise accuracies in levies are not, however, expected. Nor are they necessary so long as fines are not overly harsh. The function of this criterion is to ensure the economic impact of a strike will be fully experienced so that the duration of any such stoppage will be minimized. Further, since the SMB and penalty system will automatically be a part of every strike, the parties will be well aware in pre-strike negotiations that any preparatory activities will do

little to ward off the economic woe impending should they fail to settle. Hence the potency of the strike threat will be restored.

Restoration of the strike threat effect is the key goal of the scheme. If the economic threat is restored so will be the efficacy of the strike-threat system to coerce peaceful settlements. The consequence of that is that the incidence of strike activity will also decline. It should not take many strikes under this system before both labour and management in Alberta realize that the cost of disagreement can no longer be avoided. Henceforth when the bluff is called the consequences will be as dire, if not more so, than ever before notwithstanding any insulating activities the parties might devise.

The second criterion to be used in establishing the daily penalty to be levied against the parties - the differential between a party's last offer and the conciliation benchmark - is aimed at added coercion to force the parties to alter their positions and move closer to the contract zone. Parties who agree to the benchmark would not be subject to this penalty factor. The factor would be calculated at a percentage of the differential, and that percentage would be the same for both parties on a given day. Thus the party furthest from the benchmark would pay more than the one which moves closer to it.⁹ Increased offers and reduced demands are thereby rewarded through decreases in the penalty payable. Another important feature of this factor is that the percentage element would increase as the strike drags on.¹⁰ This would serve to mount increasing pressure for settlement.

These criteria must be the only ones considered by the SMB. Any issues of the relative equities of the parties' stands are extraneous and must not enter the calculation. On appeal by either party the board might

be required to justify its levy, based on the allowed criteria only, to the Minister (of Labour). Aside from, as Sherman puts it, "practical considerations such as how much the disputants could pay and still have a bargaining opportunity",¹¹ these constraints would be the only ones on the SMB. Flexibility in tailoring the scheme to each stoppage is crucial to its effectiveness. The daily amounts of penalties for the respective parties would, as previously mentioned, be set out at the onset of each day's negotiations. It would also be useful to set out the total fine incurred to that date by the respective parties to ensure they are acutely aware of the costs resulting from their continued failure to settle.

Those Subject To The Levy

In regards to management, it is clear that the company would be liable for all penalty amounts levied against its side. The union side, however, poses somewhat of a problem. Clearly the penalties would be much more effective if they were collected from the individual strikers. Unfortunately, the administrative nightmare this leads to is prohibitive. Thus it is best to levy a proportion of a total assessment against each individual employee on strike, but make the union responsible for collection and submission of the aggregate. Any sums it fails or agrees not to collect from its membership it would then be responsible for from its own sources. This scheme has the immediate effect desired on the strikers, yet makes enforcement a feasible task. All penalty amounts due would be submitted every three days with any amount outstanding (since the last due date) just before settlement to be forgiven. Any overdue accounts would be collected as against the union or company like a legal debt in the same fashion as other monetary penalties under the A.L.A. (eg. ss.168-171).

Disposal Of The Penalty Proceeds

The levies collected by individual SMBs would be deposited in a "Strike Compensation Account" (SCA) maintained by the Treasury Department. The SMBs would of course be required to submit appropriate records to facilitate auditing of the proceeds. The SCA would accumulate for each fiscal year at which time its balance would be published and then funneled into general revenue. In this way all Alberta citizens would indirectly benefit from the scheme through subsidization of government revenues which would otherwise come from tax sources. The subsidization of tax revenue offers at least some compensation to the public for the inconveniences they must suffer as a result of strikes. Publication serves the dual purpose of giving the public some consolation, while at the same time communicating to strike participants and advocates a warning of some of the costs of such activity.

SUMMARY

In this chapter stage one of the proposition being put forth in this thesis as an immediately viable solution to current levels of labour strife in Alberta has been outlined. The scheme fully retains the Alberta industrial relations system as it now operates. As a result, it represents much less disruption to the system than other alternatives offered to date. Basically the solution offered here merely sets out to offset labour and management tactics which insulate them from having to suffer the costs normally associated with engaging in strike activity. A second criterion in the monetary penalty relates the quantum of the penalty to the reasonableness of the parties' position, as determined by the conciliation benchmark. The fines are set and collected by a "Strike Mediation Board" (SMB) which would be set up to fill the present

void of procedure in the A.L.A. once a stoppage begins. The SMB's functions also include communication of accumulated losses and recoupment periods at the opening of each day's negotiations. The compulsory daily negotiations would also be mediated by the SMB.

This first stage of the scheme for revivification of labour strike utility will have a dual effect. First, it will reduce strike incidence through restoration of the potency of the threat which thereby reduces resort to conflict. Second, it will reduce the duration of those strikes which will inevitably occur by ensuring that failure to compromise is an increasingly costly alternative.

It is recognized that some strikes may, in spite of the operation of stage one, drag on past the point of their utility. Further, in some cases there will be a need to intervene in certain essential service stoppages should settlement not be reached quickly. In the chapter which follows the second stage of the proposal being made here is outlined. Stage two is a government intervention scheme that utilizes a cost-benefit analysis technique, which may be weighted by an essentiality factor, to determine the point at which the economic costs of a strike begin to exceed any economic benefits which could be derived from its continuance.

FOOTNOTES

CHAPTER VII - REVIVIFICATION OF STRIKE IMPACT: STAGE ONE

1. It is recognized that, as is illustrated by the Mabry model and recognized by Chamberlain (see Chamberlain, Neil W., and Kuhn, James W., Collective Bargaining, (1965), pp. 182-189), the perceived costs of agreement to a given offer can be manipulated through bargaining tactics. However, for purposes of the argument being presented here this fact need not be considered. The probability factors associated with CMR and CUR, incorporated in the Pen and Mabry models, are also ignored in this discussion as they would add little to the insights sought, and serve only to complicate the analysis.

2. Hameed, S.M.A., "Responsive Bargaining: Freedom to Strike With Responsibility", Relations Industrielles, Vol. 29, No. 1 (March 1974), pp. 210-217.

3. Ibid., p. 212.

4. Ibid., p. 212.

5. For example, Professor Roger Sherman of the University of Virginia (Economics Department) suggested adoption of a "public inconvenience charge" to be levied against the parties to a public service stoppage. Sherman was commenting on Stevens' article on compulsory arbitration discussed here in Chapter Six (see note 13 thereto). See "Criticism and Comment", Industrial Relations, Vol. 7, No. 2 (February 1968), pp. 183-185.

6. Isaac, J.E., Compulsory Arbitration in Australia (Task Force Study No. 4 - 1968), p. 28, (brackets added).

7. Ibid., p. 27.

8. Hameed, op. cit. (see note 2), p. 320, suggests the period for this ventilation of emotions be 3 days as it is short enough not to cause serious public inconvenience. He suggests it could be made longer or shorter depending on actual experience.

9. It is recognized that in respect of non-monetary issues quantification in dollar terms is difficult. However, as noted in Chapter One, most strikes are majorly concerned with economic terms or at least terms which can, even if crudely, be reduced to dollars and cents.

10. Hameed suggests that the percentage begin at 1% and increase by an additional per cent each day (op. cit. (see note 2), p. 321).

11. Sherman, op. cit. (see note 5), p. 184.

CHAPTER VIII

RATIONALIZED GOVERNMENT INTERVENTION

OPENING REMARKS: GOVERNMENT INTERVENTION POLICY

In this chapter the second stage of the revivification scheme being offered will be outlined. Before delving into the mechanics a brief background to government intervention may be useful. The premise here is that there will always be at least a few strikes in which the government will have to intervene to ensure the health and safety of the public. It may also be argued that there will be cases where a dispute pointlessly drags on and intervention is advisable to ensure needless losses are not suffered. As has been noted previously in this paper, present provisions for government intervention in "emergency" disputes (A.L.A. ss. 163-165) are based on the squeaky wheel principle. The Act states: "Where in the opinion of the Lieutenant Governor in Council an emergency exists...". In so stating it leaves ample room for parties adversely affected by its provisions to justifiably perceive capriciousness in its application.

Some argue it would be better to simply list essential industries and prohibit strikes therein as has been done with police and fire services. The problem with this approach, as Federal Labour Minister Munro has recognized, is that "if we try to define what industries are essential, where does the list end?"¹ He cites two illustrations of the problem. The first was the case of the 1973 light bulb changers strike in England which brought traffic in major centres to a standstill. The second illustration was the dispute of the elevator construction workers in

Canada the same year. This latter stoppage tied up \$800 million in construction and caused havoc in hospitals, nursing homes and other essential services. Who, Munro asks, would have considered these essential services before the fact? His conclusion is that there can be no broad categorization of industries as essential, but rather only certain strikes which can be considered as unacceptably disrupting essential services. The Woods Report came to a similar conclusion.²

Emergency situations are not limited to danger to public health and safety. Indeed even under the present statutory provisions an alternative criterion for issuance of a back-to-work order is when "unreasonable hardship is being caused or is likely to be caused to persons who are not parties to the dispute."³ Further, essential services are not necessarily static over time. What is an essential service in winter may not be so in summer and so on. Hence any statutory government policy on intervention must be flexible, yet offer objective criteria through which to justify the work order and its consequent imposition of compulsory arbitration.

Philosophically, in the democratic framework, rationalization of government intervention in labour disputes poses a difficult problem. Dicey, writing at the turn of the century when government labour legislation was a fledgling concept, recognized this when he queried: "How can the right of combined action be curtailed without depriving individual liberty of half its values; how can it be left unrestricted without destroying either liberty of individual citizens or the power of the government?"⁴ Hameed⁵ suggests that the answer which can best be justified on its foundations in economic equity lies in conceptually and operationally relating intervention policy to cost criteria. This, he suggests, would theoretically

bridge the gap between the Smithsonian laissez-faire doctrine and the Hobbsonian-Keynesian school of increased government intervention. The Smithsonian doctrine, which traditionally dominated public policy on labour disputes, is clearly giving way to the increasingly popular interventionist school. This has been especially so in Canada since the P.C. 1003 (and its peace-time equivalent - the Industrial Relations and Disputes Investion Act of 1948) copied the Wagner Act approach. A quarter of a century later, Hameed's model to rationalize intervention offers a welcome means to compromise.

The Hameed theory links the costs and benefits of a strike to public intervention policy. As a result it offers much more objective, and therefore acceptable, criteria for invocation of emergency measures. At the same time it allows the flexibility necessary to handle the dynamic issue as to when in fact a given stoppage amounts to an unacceptable disruption of necessary services. The theory seeks to establish "a conceptual relationship between the freedom of a union to strike and the right of the society to receive goods and services, uninterrupted".⁶ A more important aspect for purposes here is that the constructs of the theory can be operationalized by converting the concept of freedom per se into that of economic freedom and the costs thereof. A criterion for government intervention policy in labour disputes is thereby created. The model Hameed offers for intervention policy forms the basis for the mechanics of stage two in the proposed revivification scheme offered in this thesis.

THE MECHANICS OF STAGE TWO

In his "Responsive Bargaining" paper Hameed suggests that a penalty-compensation scheme, such as forms stage one of this proposal

outlined in the previous chapter, would be sufficient to constrain essential service strikes to a degree which precludes necessity of a procedure for settling emergency disputes.⁷ The approach here is less optimistic. Certainly the incidence of emergency disputes will be lower than is presently the case. However, it is argued there will still be situations in which continuance of a stoppage would be intolerable even given that the parties are paying the price. The following model sets criteria, based on those factors which are practically measurable under a cost-benefit scheme, on which the decision to order workers back on the job, and impose arbitration, ought to be made.

Cost and Benefit Factors⁸

1. Value of Total Production Lost (VTPL) - each day that a strike continues additional man-days are lost. Each man-day represents one additional Resource Unit Unemployed (RUU).⁹ VTPL can be considered the aggregate of the dollar value of productivity loss. It can be calculated by multiplying the man-days lost due to the strike by the value of the output per man-day of the bargaining unit at the company being struck. Thus, as the strike continues the plotted path of the VTPL would reveal an increasing function. At early stages in production industries there may be a lesser slope to the curve while inventories are used up. Any revenues flowing from such stockpiles (not compensated for by the stage one fines) are to be deducted from the VTPL.¹⁰

2. Discounted Net Benefit (DNB) - is the benefit which the union members derive from the strike. Technically it is equal to the negotiated wage increase over the contract period plus strike pay (or that part not compensated for in stage one) less continuing loss of pay during the strike (and any penalties payable). However, since the negotiated wage increase

and, perhaps, the duration of the contract, will not be known until actual settlement is reached, Hameed suggests that the conciliation award be used as the benchmark for calculating DNB. This, he suggests, introduces a normative element in the intervention process akin to incomes policy.¹¹

A weighted average calculation based on composition of the bargaining unit would be applied in those units where a pay scale is involved in order that a more accurate aggregate value can be used in the intervention calculation. The loss of pay figure would be derived from the weighted value of the daily wages foregone by the strikers based on the pay scales of the previous contract.¹² Since the benefit factor is a static value (ie. the total to be gained over the life of the contract) and the loss factor cumulates as the strike continues (less allowable strike benefits), a plotting of the DNB over time would indicate it is a function with a negative slope.

3. Emotional and Institutional Benefits (EIB) - by far the most difficult, and perhaps impossible, factor to calculate is that of the emotional and "political" benefits of a strike. Nevertheless, if we accept the doctrine that every human interrelationship system must have an institutionalized mechanism for the periodic release of pent-up emotions in order to avoid what Hameed calls a Marxian antithesis, then, since the strike performs this function in the industrial relations system, some allowance must be made for its benefits when calculating an intervention point. Theoretically this cathartic benefit would be an increasing function in the early stages of a stoppage which would peak at some unknown point. Thereafter it would begin to diminish rapidly as strike duration increased and tempers again flared. Conceivably EIB could become negative in a long drawn out dispute.¹³ Unfortunately, until techniques of quantification

in the behavioral sciences improve, it will be impossible to measure with any validity the effects of a catharsis on saving man-days which might be lost through slowdowns, absenteeism, petty grievances, or even additional strikes in relation to a single bargaining unit. Hence, for the time being, the most practical approach is to set a constant value for EIB. This approach, while still making an allowance for EIB, avoids resort to unrealistic attempts at estimations.

The problem becomes what should that constant value be. It must be low enough not to unduly affect the appropriateness of the calculation yet significant enough to reflect the real benefit which is derived from the ventilation of frustrations. When Hameed tested his intervention policy model on data from the 1966-1967 Algoma Steel strike he took the difference of excess man-days lost in Australia (where frustration from compulsory arbitration has led to very extensive wildcat strike activity) over Canadian man-days lost for 1966. From these figures he calculated a national saving from the lower incidence of institutionalized strikes. This figure then served as the EIB for the test (which verified the shapes of VTPL and VNSB, infra, theorized¹⁴). Unfortunately, although this may be appropriate when dealing with a large national strike, such a figure seems inappropriate for calculations for intervention in single plant and smaller Alberta stoppages. The focus here is the cost-benefit to an individual company and EIB must reflect this smaller scale.

Given that the true value for EIB cannot readily be derived it is clear that any proxy value will be subject to justifiable criticism. However, the substitute measure offered here represents at least a defensible approximation of the micro level value of this benefit. The solution suggested is that one figure be set to be used for all disputes in a given year (thus simplifying and minimizing the necessary data

compilation and calculation). That figure would be calculated annually by staff of the Research Branch of the Alberta Department of Labour. The calculation would involve determining the annual man-hour losses incurred by firms due to absenteeism, slowdowns, petty grievances and any other loss factors considered the result of industrial frustration (for example, the cost of sabotaged equipment) in the six months prior to a strike. From that would be subtracted the losses from these factors experienced in the six months following a strike. The average annual value of the net figure for all strikes would form the value of EIB in the immediately following year. Admittedly this ignores any of the psychological benefits workers derive from the catharsis, but such are at present simply unquantifiable.

The data would be compiled from a compulsory information sheet sent to each company experiencing a strike in a given year. The firms would derive the information from their business records plus, knowing what was expected of them, any necessary additional records kept. The effects of inaccuracies and untruths would be, in large, minimized in the aggregation and averaging process. The total average estimate of man-hours lost from pre-strike industrial tension would then be multiplied by the weighted average hourly wage for the province (a statistic already available). This would give an approximation of the dollar savings derived on the average for that year from the EIB of a strike. It may well be preferable to use the value from a three year moving average (or such other arrangement as experience dictates) rather than to rely just on a single year. Whatever, the figure would be applied as a constant (horizontal slope) in all intervention point calculations for all disputes in Alberta in the given year thus avoiding the inequities of separate

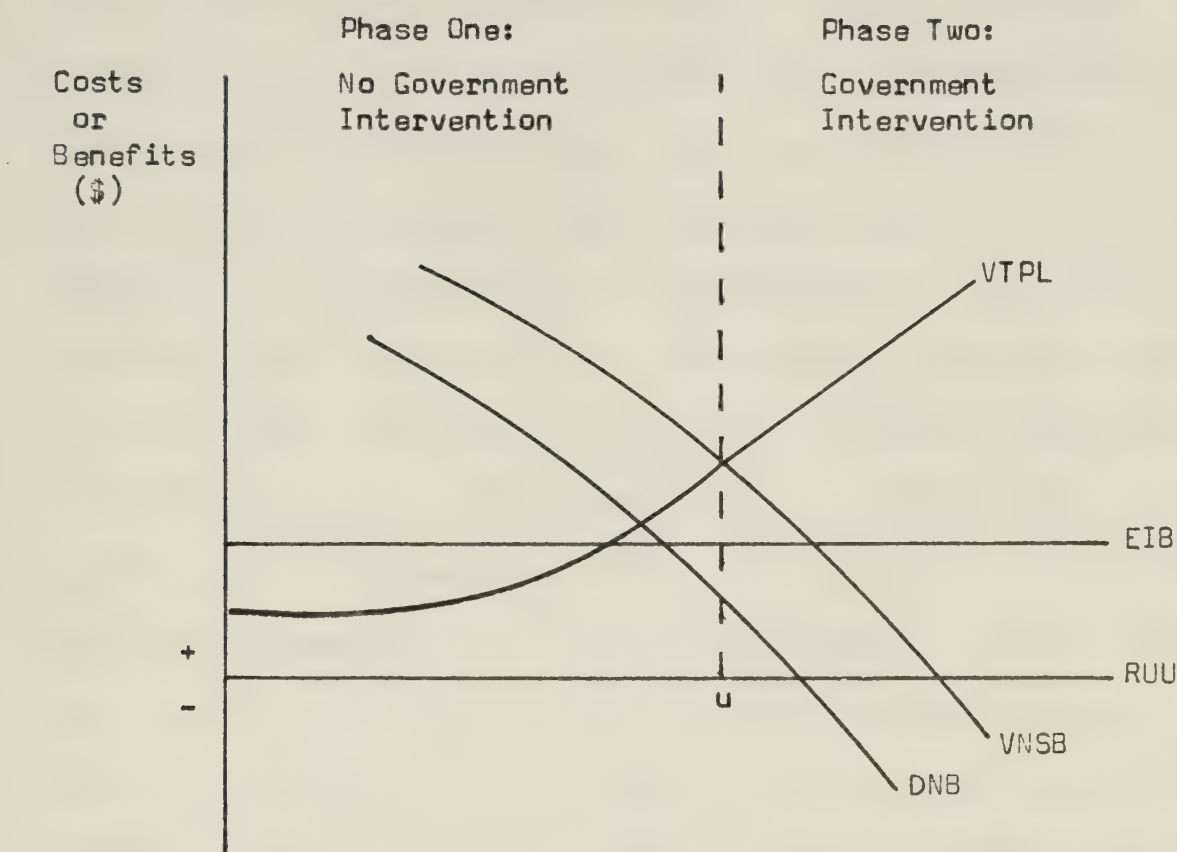
"guesstimates" for each strike.

4. Value of Net Social Benefit (VNSB) - is a very simple factor since it comprises of merely the two benefit curves (DNB and EIB) and a cost curve which represents the loss of economic freedom (LEF) to consumers and other producers etc. Operationally, since the psychological aspects cannot be included, LEF is the same as VTPL. Theoretically, if the value (VNSB) were plotted it would be convex to the "x" axis. However, since EIB must be treated as a constant, the graph of VNSB in practice would be an outward shifted duplicate of the DNB curve (as modified by the subtraction of LEF).

The Point Of Intervention

The derivation of the point at which government intervention to halt a strike becomes justifiable in the economic sense can be illustrated algebraically or graphically. For simplicity and brevity the latter only will be used here. Further, although a marginal approach might also be used (ie. applying marginal operations to the daily values of VTPL and VNSB to yield the "Value of Marginal Product Loss - VMPL , and VMSB - the "Value of the Marginal Social Benefit"¹⁵) the model will be put forth here using the variables in the absolute sense. Figure 8-1 shows a graph of the above enumerated cost and benefit factors as they would appear modified by the practical measurement problems noted.¹⁶ As can be seen VNSB is a declining function; as the strike wears on its benefits become decreasingly significant. VTPL is an increasing function since the economic loss resulting from the stoppage rises with the number of man-days (RUUs) lost. Until point u the benefits of the strike (VNSB) exceed the costs (VTPL) indicating that government intervention, economically speaking, is unwise. The intersection of VNSB and VTPL marks the end of this relationship and

Figure 8-1



further prolongation of the dispute will be costly to both the parties. Hence, the point at which government intervention becomes justifiable is when $VNSB = VTPL$. The fact that intervention at this point becomes defensible does not, however, necessarily mean such action ought to be undertaken. The government might well be advised to enter the dispute earlier, later, or not at all depending on the essentiality of the industry.

The Essentiality Factor

In Hameed's macro-effect model allowance for the essentiality of the services being forgone as a result of the stoppage is implicit in the calculation of LEF and VTPL. In the present model, since the social and externality costs have not been included, LEF has been equated to VTPL. In addition, since the model has been keyed down to the micro scale of the individual firm being struck, VTPL reflects only the aggregate dollar value

of productivity lost to the firm. Essentiality of services cannot be said to always be reflected by the dollar value of productivity lost to the firm. Further, EIB has been treated here as a constant and only concerned with frustration-induced loss recoupment for the firm. The result of these two changes is that the essentiality of the services being disrupted is no longer implicit in the calculations. The model as presented here is concerned only with dollar losses to the firm and fails to allow for the fact that the losses to the society in general may be much more severe than the dollar value of production lost to the firm. Hence it is suggested that an additional factor be added which would account for the necessity of the affected services in the community. Again quantification poses a problem, but it can be argued that the simple procedure of increasing the VTPL factor would operationally achieve the desired effect. Admittedly, conceptually, the severity of sufferance flowing from loss of essential services is a rising function as strike duration increases. However, in light of the valuation problems of the concept it is suggested that a constant percentage value be used in calculating the additional "costs" of a strike related to the essential nature of the services which are interrupted. The averaging effect of this method is again seen as avoiding unresolvable disputes as to the daily rise in marginal losses flowing from this source.

The plaguing problem, as noted by Munro and in the Woods Report, is defining what is in fact an essential industry since it is indeed a dynamic concept on which many factors operate. Notwithstanding the philosophical vacillation, the solution being suggested is that a series of five levels of essentiality be set out in increasing order. Each level would identify the types of hardships and community effects to which it

ought to be applied. Associated with each of these levels would be a percentage value which would be used as the quantum by which VTPL would be increased in order to calculate the intervention point as weighted by the essentiality factor. Further, should any strike result in unexpected hardships or risks to the community (as, for example, the English light bulb changers strike did) a factor level could be applied or the existing level changed to a higher one while the stoppage was in progress. Hence the necessary degree of flexibility to cope with changes in the seriousness of a disruption is incorporated into the system. The percentage values and the definition of hardships for the five levels are best to be set by actual experience. However, the following is offered as a preliminary schedule: 1) level five - direct danger to health and safety - 50% factor; 2) level four - transport, utility or sanitation interruptions - 40% factor; 3) level three - educational and training disruptions (eg. teachers, custodians, etc.) - 30% factor; 4) level two - governmental disruptions in general¹⁸ - 20% factor; and 5) level one - stoppages which have serious adverse effects on other firms of which the struck firm is a customer or supplier, or which will unusually inconvenience the public - 10% factor. Again these levels and figures, although more than just whimsical,¹⁹ are offered as food for thought rather than as wholly defensible or optimally effective categorizations. Further, the identification of levels with particular industries is done for brevity here; such should be strictly avoided when setting out the proper definitions.

Stage Two Duties Of The SMB

Earlier it was mentioned that, shortly after formation, the SMB would perform duties related to this second stage of the proposal. Basically these duties amount to gathering the requisite data and setting up

the necessary formulations with which to derive the intervention point. Specifically, the SMB must compile statistics for: 1) the average value of the output per man-day in the bargaining unit of the company about to be struck²⁰ (to be multiplied by man-days lost as the strike progresses to arrive at VTPL values); 2) revenues flowing to the firm, after the strike commences, from inventory buildups (or those amounts thereof not offset by fines - this value is to be deducted from VTPL until depleted); 3) the aggregate gain or benefit the workers may receive from the strike (to calculate DNB); 4) the level of strike pay benefits workers will receive (or those amounts thereof not offset by fines - to add to DNB); 5) the weighted average aggregate daily losses to the workers from forgone wages (to subtract from DNB); and 6) taking the given constant for EIB and the derived value for DNB, less LEF (here VTPL), the value of VNSB. To sufficiently empower SMB members so that they can compel the parties to divulge necessary data, persons appointed as members of a SMB will have the powers of a commissioner under The Public Inquiries Act,²¹ as do conciliation board members²² and "Public Emergency Tribunal" officers.²³

After compiling all the necessary cost and benefit factors that can be established prior to the stoppage the SMB must make its initial decision as to which of the levels, if any, of essentiality the dispute falls into. Application of the appropriate factor would increase the VTPL and hence reduce the length of time it takes to reach the intervention point. After the strike commences calculations of extrapolations will reveal the date at which the dispute will pass into the intervention zone. This information should be revealed just prior to its arrival (ie. a day or two before) in order to get mileage from the extra spurt of pressure to settle it may offer. The Minister (of Labour) would also be notified

when a dispute was about to pass into the intervention zone. The final decision to actually halt the stoppage and apply the emergency provisions would remain that of the Cabinet. The difference is that under this new system any such action would be entirely justifiable on economic grounds. Further, by making it clear to both parties that any further continuance of the strike past the intervention point serves only to cost them amounts which they cannot hope to recoup from the expected settlement, resistance to intervention should significantly diminish. The losses incurred from frustration tactics protesting intervention, such as the slowdown recently conducted by air traffic controllers in protest of the back-to-work order issued against them,²⁵ would also be minimized.

In short, this second stage does not attempt to change the locus of authority for the decision to order strikers back to work. It is intended merely to offer an objective policy or criteria on which to base that decision. Use of objective policy would remove the perceived capriciousness with which such orders are now made. In doing so animosity towards the final settlement, which is an arbitral imposition, will hopefully diminish with the benefits of improved industrial relations over the term of the "agreement". There are, however, two modifications which should follow this new intervention policy. Firstly, since there is no economic justification for it, the government ought to be precluded from intervention in any dispute which has not yet passed into the calculated negative benefit zone - ie. left the zone of non-intervention. Second, although the dispute will not technically be an "emergency" (under the present definition given in section 163 of the A.L.A.), it is argued that if any stoppage is meaninglessly prolonged such that while in the intervention zone the possibility of any settlement is very remote, then it

should be halted and arbitration imposed. A survey of Alberta strike statistics reveals that on a suprising number of occasions strikes have simply gone on indefinitely.²⁶ Workers find other jobs and management hires new staff - the union simply disintegrates. Although the penalty scheme in stage one may well reduce the incidence of this occurrence, it is not intended to modify the relative normal bargaining power of the parties. Intervention and arbitration appear the most effective way to end such unproductive labour strife. Invocation of this additional authority might be limited by necessitating an appeal from the SMB for its application.

SUMMARY

The present chapter has been used to outline the second stage in the proposed revivification scheme. It is a scheme under which government intervention in labour disputes is rationalized through use of objective criteria to determine the point at which intervention will take place. Like stage one, inclusion of this second stage in the present labour relations framework involves minimal disruption to the status quo. The main argument for adoption of such a system is that it removes the perceived capriciousness of the present system. Entrenching objective criteria on government intervention policy ensures equity in the system. The economic rationality will also serve to minimize losses culminating from the recalcitrant reactions which accompany back-to-work orders and their consequent arbitral agreements.

The intervention calculation is admittedly a complicated process in which some of the variables must be approximated due to the present status of measurements in the social sciences. Hopefully the situation will improve in the not too distant future. Nevertheless, it is argued

that even as it stands the model can be practically operationalized. Once in use it may well be found that there are more accurate ways to establish parameters and variables, but the importance of the proposition lies in its principle. It has been stated here that strikes are inevitable even under the constraining effects of the first stage of the revivification scheme. As long as there are strikes there will be times when, even though the parties are willing to suffer the consequences, the public cannot be expected to bear the burden. At some point the welfare of the many must outweigh the welfare of the few if the community is to continue to function. That point, in the labour relations sense as much as in any other sense, ought to be determined as objectively as possible.

The government, as the elected representatives of the majority, must remain the decision centre as to when to impose the welfare of the majority at the expense of the freedom of the minority. The scheme offered here for government interference in labour disputes maintains the Cabinet as the ultimate decision makers, but imposes guidelines for the decision. The squeaky wheel principle can produce inequitable results; the interests of the vocal majority may override the disputants' economic freedoms before such could be rationally justified. If those who suffer the loss of freedom cannot be mechanically shown justification for their loss, then by human nature they will resist it and less visible labour strife losses will occur. Government intervention in labour disputes is a necessary evil in our interdependent society; rationalization of it will at least reduce the evil.

The concluding chapter to this thesis which follows offers a summary of the main points which have been argued in this and the preceding chapters. It also contains a discussion of some of the limitations

of the study, as well as final conclusions and suggestions for further research.

FOOTNOTES

CHAPTER VIII - RATIONALIZED GOVERNMENT INTERVENTION

1. Munro, J., "Arbitration in Essential Industries", Labour Gazette, Vol. 74, No. 4 (April 1974), p. 257.
2. Woods, H.D., Chairman, Task Force on Labour Relations, Canadian Industrial Relations, (1968), pp. 169-174, paras. 575-595.
3. A.L.A., s. 163(1)(b).
4. Dicey, A.W., "Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century", as quoted in Anton, Frank R., The Role of Government in the Settlement of Industrial Disputes in Canada, (1962), p. 245.
5. Hameed, S.M.A., "A Theory of Strike Cost and Government Intervention Policy", Indian Journal of Industrial Relations, Vol 7, No. 2 (October 1971), pp. 155-173.
6. Ibid., p. 155.
7. Hameed, S.M.A., "Responsive Bargaining: Freedom to Strike With Responsibility", Relations Industrielles, Vol. 29, No. 1 (March 1974), p. 217.
8. The cost and benefit factors to be outlined here are those set out by Hameed in his original paper on the subject (op. cit. (see note 5) pp. 163-170). However, in that paper the model is designed for total effects of a strike on the economy using Leontiff input-output techniques and backward-forward link coefficients for industries. The interest here is in applying the model to a single firm and the isolated economic effects thereon of a strike, hence a few modifications have been made. Most significantly no attempt is made here to account for the back and forward links with other firms in the economy which may well also be affected by the strike and hence could validly be included in calculating the macro "value of total product lost" etc. The justifications for presenting this more simplified model are twofold. First, a single firm approach offers the type of simplicity necessary to make the scheme administratively feasible on a strike-by-strike basis. Second, the data necessary for the more complex calculation would be difficult to obtain given that the web of business relationships is often quite large and statistical services are always quite slow.
9. This figure, as Hameed notes, in a more complex model might also include man-days lost by workers laid off in other affected industries as a result of the strike. See Hameed, S.M.A., "Cost-Benefit Analysis of

a Strike: A Tentative Framework", Relations Industrielles, Vol. 31, No. 1 (January 1976), p. 146.

10. Hameed, op. cit. (see note 5), p. 166, notes that at later stages, in a more complex model considering the total economy, VTPL would also plateau at a later stage in the strike as customers found alternate sources etc. He also notes a paper by Christensen which suggests that in time multi-plant operations could shift production or services to a centre not being struck. This would have a plateauing effect on the VTPL for the company itself (see Christensen, C.L., "The Theory of the Offset Factor: The Impact of Labor Disputes Upon Coal Production", American Economic Review, Vol 63, No. 4 (September 1943), pp. 513-547). The factor would not, however, be a problem under the proposition being outlined here as such would be an "insulating tactic" any advantage from which would be penalized away.

11. Hameed, op. cit. (see note 9), p. 147, note 8.

12. It could be argued that the company's last offer might more accurately reflect the employees lost benefits in DNB calculations. However, this presumes that a wage increase per se is the only benefit which they seek to gain through the strike.

13. Hameed, op. cit. (see note 5), p. 166.

14. Hameed, op. cit. (see note 9), p. 155.

15. Hameed uses a marginal explanation in his "Strike Cost and Government Intervention Policy" paper, op. cit. (see note 5), pp. 167-170.

16. Source: Hameed, op. cit. (see note 9), p. 147.

17. It is assumed firefighters and policemen would remain under a strike prohibition.

18. It is recognized that under present laws the majority of provincial employees are prohibited from taking strike action. So long as this law remains, application of disputes coming within this level would, in chief, be in respect of municipal employees.

19. This outline, the percentage values aside, was largely derived with the aid of research done by a fellow graduate student who surveyed certain labour officials and the general public on the opinions as to Alberta essential services. Although the sample was relatively small (n=73) the study offers some valuable insights into what Albertans consider essential services. The majority clearly feel essential service employees ought not be allowed to strike. See Hohol, Milt, "Essential Services: The Right to Strike", an unpublished paper submitted to Dr. S.M.A. Hameed, Faculty of Graduate Studies (M.B.A. Department), in partial fulfillment of course requirements, Business 471, The University of Alberta, March 1975.

20. Although this figure can be readily calculated for the private sector in production industries, and even in service industries,

it is more difficult to derive it in the public sector where most services are free and no revenue function is available. The suggested solution is that all or part of the budget allocation to provide the service best approximates its economic value.

21. R.S.A. 1970, c. 296.

22. A.L.A., s. 113(4).

23. A.L.A., s. 164(2).

24. This fact is somewhat distorted by application of an essentiality factor. Calculations without the factor weighted in might be used to show that economic disutility of the dispute would not be long coming at any rate.

25. Edmonton Journal, Thursday, August 11, 1977, p. 2.

26. For example, this was the case in two strikes which began in 1973. The first involved the Royal Canadian Legion (Strathcona Branch 150) and the Beverage Dispensers, Hotel Service, Culinary and Restaurant Employees Union (Local 579) in Edmonton, and the second involved Plastex Extruders Ltd. and the Driver Salesman, Plant, Warehouse and Cannery Employees Union (Local 987) in Calgary. The Research Branch, Alberta Department of Labour, estimates there are in excess of one hundred such strikes still legally in effect in Alberta (source: unpublished data entitled "Strikes and Lockouts - Alberta - 1974", page 6, note 2).

CHAPTER IX

SUMMARY, CONCLUSIONS, AND LIMITATIONS

SUMMARY AND CONCLUSIONS

The Bargaining Process

In this thesis it was argued that, as illustrated by the negotiation models of Chamberlain, Pen, Stevens, and Mabry, the motivating force in compromise offers and demands results from the cost of disagreement being disproportionate to the lesser cost of agreement. This contributed to the conclusion that the role of the strike in the collective bargaining process is to ensure that the perceived cost of refusal to compromise is greater than that of compromise and to thereby coerce agreement. It was also argued that the strike is integral to an optimally efficient bargaining system. Further, for the system to function properly over time some level of strike activity must be accepted - ie. some strike incidence is inevitable.

Alberta Legislation

In Alberta, private sector strikes are permitted so long as the stipulated conciliation and notice procedures have been complied with. Federal employees working within the province have a choice of arbitration or a conciliation-strike route. However, provincial employees falling under the new Public Service Employee Relations Act are forbidden to strike and must submit all disputes to compulsory binding arbitration. Municipal employees within Alberta, with the exception of policemen and firemen, are covered by the private sector Alberta Labour Act, 1973. All strikes

occurring during the term of a collective agreement under this province's legislation are illegal. The major issue in current legislation is the question of the equity of differentiating between provincial civil servants and all other employees within Alberta. The justification for the status quo which has been offered by government officials is that these governmental employees' services are essential.

Strike Incidence

Statistics show that in general strike activity is on the rise. It is argued here that the relief which has come in the past two years results largely from present Federal incomes policy legislation. The Anti-Inflation Act, in most cases, would make strike activity fruitless as against an employer who has already agreed to the maximum allowable settlement. Strike activity appears to be primarily a regionally oriented phenomenon with little correlation in incidence levels between the provinces over the years. Alberta's incidence is generally somewhat lower than the national average, but it too has shown definite trends of increase up to the passage of the Anti-Inflation Act. There does not appear to be any predictable pattern or cycle in the 1960-1976 period nor any significant correlation between the number of strikes, workers involved, and man-days lost statistics.

Alberta's proportion of public sector strikes, as might be predicted in light of the legislative provisions thereon, is lower than the national average. Nevertheless the three incidence statistics all indicate a rise in the relative propensity to strike in these employees (notwithstanding the law). It is predicted here that when the wage controls are removed and the perceived benefits of strike action are restored we can expect a virtual mushrooming of labour strife unless the strike-

threat cost is sufficient to deter such activity. Thus a viable solution to the present woes of the strike system is an urgent quest.

Insulating Tactics

In order to correct the current dwindling of labour strike efficacy in promoting industrial peace it is necessary to diagnose what the factors of causation are. Those factors, it is suggested, are what have been termed here "insulating tactics" undertaken by the parties through which they seek to defray the economic consequences of engaging in a strike confrontation. By undertaking such activity the parties reduce the threatened cost of disagreement thereby reducing the potency of the strike threat. As the potency declines so does the coercive pressure to compromise and hence more strikes are experienced. Further, since the actual cost to the parties of a strike is reduced by insulation tactics, the average duration of labour strikes predictably has also increased. Most of these factors (ie. insulation tactics) simply cannot be removed, and for others the administrative task of stopping them is prohibitive. As with the income tax system, trying to plug loopholes would simply lead the parties to seek out new ways to avoid the impact.

Alternatives To The Strike

If the utility of the strike in promoting labour peace is steadily declining and attempts to prohibit the factors leading thereto would be futile, then ought we not to seek an alternative to the strike-threat system? A study of the more prominent alternatives offered to date reveals that there is no option currently being proffered which is both practically and philosophically palatable in the free democratic framework, and at the same time feasible in an administrative sense and effective in a pragmatic sense. In short, it is argued here that strike substitutes offered to

date are inappropriate as solutions to present problems of labour unrest in Alberta. The logical corollary is that, at least for the time being, the traditional labour strike is here to stay.

The Prescriptive Approach

If an alternative system is not the answer then the remaining solution is to repair what we now have - a prescriptive approach. If, as noted above, prohibiting the various insulation tactics is an impossible strategy, then the appropriate attack plan is to offset any benefits which the parties may derive from insulating tactics. Such action would restore the economic impact of the strike on the combatants. This can be achieved through institution of a monetary penalty scheme in which levies would ensure that the parties could not cushion themselves from strike costs to an extent which would inhibit the effectiveness of the stoppage. Because proceeds would flow to general public revenue a diseconomy of the present strike system would, in part, also be redressed.

Notwithstanding the financial penalties, the parties might be well willing (either rationally or simply stubbornly) to continue to pay the cost of procrastinating settlement. To prevent needless waste or injury, once the cost of a stoppage exceeds any possible benefits therefrom (the costs possibly being weighted by an essentiality factor), then where the service disruption: 1) poses a risk to public health or safety; 2) causes unreasonable hardships on persons not a party thereto; or 3) is simply continuing fruitlessly, the government ought to intervene and impose an arbitration procedure. The locus of authority for the intervention system should remain the same as is now the case (ie. with the Cabinet). However, the addition of objective policy criteria under which to make the decision is necessary to minimize adversity to such action,

and the losses consequent therefrom.

Admittedly the proposed revivification scheme results in increased government involvement, at least indirectly, in labour relations. However, given the choice between the two impending dooms outlined by Chamberlain (cf., Chapter One), it is argued that limited intervention now represents the lesser of the two evils. The basic economic reality expressed in the lines quoted from the eminent Justice Oliver Wendell Holmes which open this work is as true today, if not more so, than when first written in 1896. Clearly society, in the form of governmental authority, possesses the power to assure its interests are met. If we are to prevent an overreaction to the present (and even greater impending) levels of labour strife some measure of increased governmental infringement must reluctantly be accepted now.

Equality Before The Law

While not wishing to re-embark on the discussion as to the equity versus the essentiality in the dispute over isolating provincial civil servants under a separate Act, it is suggested that given the scheme herein proposed it is feasible to cover all employees within Alberta's jurisdiction under one Act. The monetary penalties would serve to reduce the incidence and duration of strikes, and to compensate the public for the inconveniences from labour dispute disruptions. The cost analysis criteria (weighted by an essentiality factor), on which the decision would be based to order workers back to work, would ensure minimal disruptions and adequate services in the truly essential areas. Certainly there are private sector services which are more essential than many public sector services. There are presently services (eg. hospitals) within which some operations are covered by the private sector legislation (and the consequent right of

employees to strike), while identical operations are under the provincial employee statute where workers are forbidden to strike.

The two-stage system proposed in this thesis offers strike compensation - allowing employees to strike and management to take a strike so long as they are willing to pay for it - backed with the ultimate weapon of rationally invoked government intervention. It is feasible that such a scheme could suffice the needs of both sectors by ensuring essential services while at the same time offering the right to free collective bargaining and the equity which flows from universalism - one law for all men. This latter concept seems to have somehow operated effectively in Saskatchewan labour relations since 1944.

LIMITATIONS AND RECOMMENDATIONS

FOR FURTHER RESEARCH

This study has offered a broad proposal to restore the impact of the labour strike on the parties thereto and to thereby ensure that the incidence and duration of stoppages is minimized. In the same light it has offered a scheme whereby interference with free collective bargaining (viz. government back-to-work orders) is objectively based and minimized to those cases where the costs of a stoppage have overtaken any possible benefits therefrom. In such cases allowing continuance would only increase public risks and inconveniences or further deterioration of labour relations between the disputing parties. The general appropriateness and applicability of this proposal is necessarily constrained by the limiting features which have operated on this study. Since knowledge of such limitations will aid both evaluation of the efficacy of the instant proposition and future research aimed at improving upon it or testing it, the following discussion is directed at outlining these limitations.

Jurisdictional Uniqueness

Naturally the scope of the study is one limitation. This research has only concerned itself with the Alberta labour scene over the past seventeen years. It has been premised on the argument that adversarial labour relations, as opposed to more cooperative joint consultation models, are here to stay for some time to come. Alberta's particular labour legislation and political and labour climate creates different problems and issues than might be the case elsewhere. The regional statistical variations on strike incidence are but one source of evidence of this jurisdictional diversity. Another aspect somewhat unique to Alberta at present is the buoyant economic state and relatively low level of unemployment. Such factors serve to allow greater cushioning by the parties against strike impact. The fact that Alberta industry is geared to resource and primary production also must be considered. Meat packing and petroleum refining are highly automated and this fact, considered in light of the proportion of Alberta employees working in the public service, makes the environment ripe for avoiding strike costs through continued operations or simply as a relief to the fiscal crisis.

Statistical Deficiencies

A significant drawback to the study which has been presented relates to the general unavailability of appropriate data with which to work. Government labour statistic compilations have, to say the least, been extremely dismal efforts in the past. Different statisticians have changed the various statistics recorded over time making longitudinal studies difficult. Much information which would have been extremely helpful in this study is simply not kept. Even the basic data necessary to calculate Kelly's three strike incidence measurements (cf. Chapter

Four) is not available. The situation is slowly improving and perhaps in the future a more exact study will be possible. However, the problem is that of the urgency of the present situation (especially with decontrols - for the wage guidelines - scheduled to begin in April of 1978). Perhaps one way to solve this data problem would have been to undertake a survey for this paper. Unfortunately time and economic constraints precluded such a possibility since it is felt that any survey undertaken would have to be of a very significant sample (eg. $n = 1000$ plus) to be even remotely relevant. Hence it was felt that it would be better to maintain a "library study" format basing the analysis on available documents rather than to attempt a small survey of questionable validity. Nevertheless, future research in the area might well be enhanced by initiating an extensive and comprehensive survey on the subject.

Areas For Further Study

One area which will have to be the subject of further research before the model which has been offered could practically be operationalized is that of establishing the appropriate values for the range of percentage multipliers of the second criteria in the monetary penalty stage, the EIB factor. Also the level definitions and factors thereto for the essentiality weighting multiplier must be determined.

An additional problem with the proposition as it now stands is that it is only functional in respect of economic issues. Hence, one future study might focus on development of workable formulas for converting non-economic issues to a suitable format to key into the model - ie. establishing "costing-out" formulas for non-monetary issues. More study is also needed to develop a system for identifying and quantifying the effects of various insulation tactics. Again, like income tax loophole experts, it

can be expected that labour and management will become increasingly ingenious and devious in developing means to avoid strike impact. Techniques for uncovering and appropriately offsetting same must keep pace if the model is to work effectively.

The model presented which represents the culmination of this research project is by no means beyond improvement. For example, further study might well reveal other cost and benefit factors related to a strike which ought to be included in the intervention calculations for stage two. Certainly the proposed legislative revisions if worked over by an experienced draftsman might be modified to fill in the holes which no doubt exist in the preliminary draft presented.

The intent of this study has been to examine and diagnose the causes of the current declining utility of the labour strike and to then develop a prescriptive measure to effect revivification, thus maintaining and preserving the system of industrial relations now practiced in Alberta. Perhaps the greatest usefulness of these pages will be as a step in the direction of that goal. Nevertheless, if it has served to further the course towards a solution and aided the search for industrial peace in Alberta within the free democratic framework, this study will have been worthwhile.

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APPENDIX A

A STATUTORY REVISION DRAFT

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APPENDIX A

A STATUTORY REVISION DRAFT

Though without the benefit of any formal training or experience in the complex area of statute drafting, the following outline is offered as a preliminary illustration of the legislative revisions necessary for implementation of the proposed revivification scheme under the present Alberta Labour Act, 1973. The Act has also been relied upon here as a model for the clauses which follow.

A. ADDITIONS TO THE ACT

134.1 (1) On referral of a collective bargaining dispute to the Minister pursuant to section 104, subsection (1), where the Minister agrees to appoint a conciliation commissioner, the Minister shall notify in writing

- (a) the employer or employers' organization, and
- (b) the bargaining agent,

and require each of them within 10 days to appoint a person to act as a member of the strike mediation board.

(2) The two persons appointed to act as members of a strike mediation board shall appoint a third person to act as a member and chairman of the strike mediation board within 10 days of the date the second person is appointed.

134.2 No person shall be appointed or shall act as a member of a strike mediation board if the person is directly affected by the dispute or if the person has been involved in an attempt to negotiate or settle the dispute.

134.3 (1) Where an employer, employers' organization or bargaining agent fails to appoint a person as a member of a strike mediation board, the Minister may appoint a person to act as a member on his or their behalf.

(2) Where the two persons appointed as members of a strike mediation board fail to appoint a person to act as a member and chairman, the Minister may appoint a person to act as a member and chairman on their behalf.

(3) Where a vacancy occurs in the membership of a strike mediation board, it shall be filled in the same manner as provided for the appointment of the member or chairman.

134.4 (1) Where three persons are appointed to act as members of a strike mediation board, the Minister shall establish them as a strike mediation board.

(2) Upon establishment of a strike mediation board under subsection (1), the Minister shall send its chairman a copy of the conciliation commissioner's recommendations rendered pursuant to section 108, subsection (2), clause (b), or, in the case where the Minister accepts the proposal of a conciliation commissioner under section 108, subsection (2), clause (a), that he establish a conciliation board, upon receipt of the conciliation board's report pursuant to section 117, the Minister shall send the chairman of the strike mediation board a copy of said conciliation board recommendations.

134.5 (1) A strike mediation board shall inquire into the matters in dispute and, once an actual strike has commenced, shall endeavour to effect a settlement of the dispute referred to it by the Minister.

(2) A strike mediation board may determine its own procedure but shall give a full opportunity to all parties to the dispute to present evidence and to be heard.

(3) The strike mediation board or any member thereof may require by summons

(a) the attendance of any person as a witness before it at a place and time specified in the summons, and

(b) any person to bring and produce before it all documents, books, deeds, and papers in his possession, custody, or power relating in any way to the dispute.

(4) The members of a strike mediation board have the same powers as a commissioner under The Public Inquiries Act and may administer oaths.

(5) A strike mediation board may accept, admit, or call for any evidence that it considers fit whether or not the evidence would be admissible in a court of law.

134.6 Where in the opinion of the Minister any member of a strike mediation board is unduly or unnecessarily delaying or impeding accomplishment of the duties of the strike mediation board the Minister may

(a) revoke the appointment of any member of the strike mediation board, and

(b) require, by notice in writing and within the time stated, the employer or employers' organization or bargaining agent to appoint another person to act as a member of the strike mediation board in place of the person whose appointment is revoked.

(c) in the case where the person whose appointment is revoked is the chairman of the strike mediation board, the Minister may require, by notice in writing and within the time stated, the two respective appointees to appoint another person to act as a member and chairman of the strike mediation board.

(d) upon failure of the requisite party to appoint a person to replace the person whose appointment was revoked the provisions of section 134.3, subsection (1) or subsection (2) shall apply.

134.7 (1) A strike mediation board shall meet at such times and places as are fixed by the chairman and where possible within the locality in which the dispute arose.

(2) Notwithstanding subsection (1), within three days of commencement of a legal strike, as defined by section 126, the strike mediation board shall meet with the bargaining representatives of the parties to the dispute on each normal working day in which the stoppage continues.

(3) The chairman of the strike mediation board shall notify each member of the board and each of the bargaining representatives of the time and place of each meeting held pursuant to subsection (2).

134.8 (1) It shall be the duty of the strike mediation board to determine the total accumulated losses resulting to each of the parties to the dispute from the continuance of the stoppage on each normal working day in which the stoppage continues.

(2) It shall be the duty of the strike mediation board to determine the total number of working days it will take each of the parties to the dispute to regain the total accumulated losses resulting to each of the parties to the dispute from the continuance of the stoppage, based on the presumption that each of the respective parties is successful in obtaining a settlement entirely on its own terms.

(3) At the commencement of each daily meeting stipulated in section 134.7, subsection (2), the chairman of the strike mediation board shall disclose to each of the representatives of the parties to the dispute, and to any other party to the dispute he deems advisable, the aggregate amount of losses resulting to each of the parties to the dispute from the continuance of the stoppage as well as the total number of working days it will take each of the parties to the dispute to regain the total accumulated losses therefrom, as set out under subsection (2) of this section.

134.9 (1) It shall be the duty of the strike mediation board to establish a daily monetary penalty level to be levied against each of the parties to the dispute which it deems as appropriate in order to ensure the parties fully experience the economic costs of engaging in the strike.

(2) In setting the amount of such monetary penalties the strike mediation board shall consider only

(a) the extent of the present economic impact of the strike upon the respective parties thereto, and

(b) the differential between the recommendations referred to in section 134.4, subsection (2), and the last offer(s) or demand(s) of the respective parties,

and the object of the strike mediation board in setting said monetary penalties shall be to offset any factors which it deems as contributing to reducing the economic effectiveness of the stoppage without disrupting the normal relative bargaining power relationship of the parties to the dispute.

(3) Upon application to the Minister by an employer, employers' organization, or bargaining agent, the strike mediation board may be required to justify any and all monetary penalty levies it may impose on the parties to the dispute on the basis only of the criteria set out in subsection (2); the decision of the Minister on this matter shall be final and binding on the parties.

(4) At the commencement of each daily meeting stipulated in section 134.7, subsection (2), the chairman of the strike mediation board shall disclose to each of the representatives of the parties to the

dispute the aggregate amount of that day's monetary penalty levy along with the cumulative value of all such sums due and paid by the respective parties to the stoppage to date.

(5) All monetary penalties levied pursuant to subsection (1) become due and payable on that date on which it is imposed, but need not be submitted until a three day accumulation is obtained.

(6) All monetary penalty levies are payable to the chairman of the strike mediation board to the benefit of the Crown in the Right of Alberta; at the termination of the dispute the chairman of the strike mediation board is responsible for accounting for and depositing the total amounts received through said levies in the Strike Compensation Account under the control of the Alberta Treasury Department.

(7) All monetary penalty levies imposed pursuant to subsection (1) become a legal debt enforceable as against the designated employer, employers' organization, or bargaining agent in a court of law.

134.10 (1) It shall be the duty of the strike mediation board to compile such information and complete such calculations, as set out in the regulations to this Act pursuant to section 167, subsection (3), clause (b), as are necessary in order to determine the point at which the value of the total production lost as a result of the dispute is equal to the value of the net social benefit which can be derived from allowing continuance of the strike.

(2) It shall be the duty of the strike mediation board to determine which, if any, of the factor levels, as set out in the regulations to this Act pursuant to section 167, subsection (3), clause (b), shall be applied as the appropriate multiplier for weighting the calculations pursuant to subsection (1) for the essentiality of the services being disrupted by the dispute in the determination of the value of the total production lost therefrom.

(3) Once a strike has reached the equilibrium point as calculated by the strike mediation board pursuant to subsection (1) the Lieutenant Governor in Council may, subject to the provisions of section 163, subsection (1), invoke the provisions for emergency disputes as set out in sections 163 through 165 herein.

(4) Not more than two negotiation days, as defined in section 134.7, subsection (2), before the equilibrium point outlined in subsection (1) is reached, the chairman of the strike mediation board shall notify the parties to the dispute that the point of possible government intervention pursuant to subsection (3) will be reached within 48 hours and that thereafter continuance of the strike will be economically unsound for both of the parties to the dispute.

134.11 Where a settlement is reached either before or after resort to a legal strike pursuant to section 126, or where a strike is subsequently halted pursuant to section 134.10, subsection (3) and sections 163 through 165, the Minister shall dismiss the members of the strike mediation board from further duties.

B. AMENDMENTS TO THE ACT

163 (1) Where in the opinion of the Lieutenant Governor in Council an emergency or other situation exists or may occur arising out of a dispute, in such circumstances that

(a) damage to health or property is being caused or is likely to be caused because

- (i) a sewage system, plant or equipment or a water, heating electrical or gas system, plant or equipment has ceased to operate or is likely to cease to operate, or
- (ii) health services have been reduced, have ceased or are likely to be reduced or cease,

or

(b) unreasonable hardship is being caused or is likely to be caused to persons who are not parties to the dispute, or

(c) a dispute is continuing without purpose and the strike mediation board sees no hope of voluntary settlement and, as a result thereof said board recommends that the strike be halted and the provisions of this division be applied,

then, provided that the strike has entered the zone of intervention as calculated by the strike mediation board pursuant to section 134.10, subsection (3), the Lieutenant Governor in Council may, by order, declare that on and after a date fixed in the order all further action and procedures in the dispute are to be replaced by the procedures under this section.

The above outlined statutory revisions would serve to incorporate the labour strike utility revivification scheme offered in this thesis into the present private sector statute (A.L.A.). As noted in section 134.10 the actual mechanics of the calculations to be performed by the Strike Mediation Board, as outlined in Chapters Seven and Eight, would be set out in regulations to the Act. Regulations would also set the daily percentage value for the second criterion in the monetary penalty stage, the levels of essentiality and the multiplier factors thereto, and the annual EIB (Emotional and Institutional Benefit) values etc.

APPENDIX B

STATISTICAL TABLES ON STRIKE INCIDENCE, 1960-1975*

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*Source: Labour Canada - Labour Data, "Strikes and Lockouts in Canada", 1960-1975 issues, (catalogue no. L2-1). Tables 4 and 5 are derived from tables 1 and 2. 1976-1977 data not available.

TABLE I

Annual Number of Strikes by Province

	<u>NFLD*</u>	<u>PEI</u>	<u>NS</u>	<u>NB</u>	<u>QUE</u>	<u>ONT</u>
1960	7	-	15	2	38	156
1961	5	-	15	6	49	166
1962	2	-	21	3	53	172
1963	9	1	15	5	73	181
1964	1	1	13	5	65	188
1965	4	-	20	8	98	268
1966	10	3	34	21	137	297
1967	9	1	36	11	143	228
1968	9	1	32	13	128	286
1969	8	-	60	17	141	238
1970	8	1	63	17	126	215
1971	29	5	33	17	134	202
1972	52	1	25	34	148	188
1973	28	2	32	21	199	204
1974	74	3	55	44	390	340
1975	42	3	65	31	363	359

*NFLD - Newfoundland
 PEI - Prince Edward Island
 NS - Nova Scotia

NB - New Brunswick
 QUE - Quebec
 ONT - Ontario

TABLE I CONTINUED

	<u>MAN*</u>	<u>SASK</u>	<u>ALTA</u>	<u>BC</u>	<u>FED</u>	<u>TOT</u>
1960	12	7	5	15	17	274
1961	4	6	8	16	12	287
1962	10	3	9	29	9	311
1963	3	4	7	18	16	332
1964	10	10	2	28	20	343
1965	12	7	9	51	24	501
1966	12	12	15	39	37	617
1967	8	11	9	43	23	522
1968	6	18	10	57	22	582
1969	6	20	15	70	20	595
1970	6	12	10	64	20	542
1971	10	6	19	84	30	569
1972	11	18	9	81	31	598
1973	18	13	25	131	51	724
1974	23	43	44	141	61	1,218
1975	33	43	34	144	54	1,171

*MAN - Manitoba
 SASK - Saskatchewan
 ALTA - Alberta

BC - British Columbia
 FED - Federal Jurisdiction
 TOT - Totals

TABLE 2

Annual Man-Days Lost By Province

	<u>NFLD*</u>	<u>PEI</u>	<u>NS</u>	<u>NB</u>	<u>QUE</u>	<u>ONT</u>
1960	7,490	---	22,110	560	207,240	337,370
1961	1,810	---	58,940	32,580	488,790	644,770
1962	1,860	---	16,380	7,910	185,160	460,660
1963	8,490	590	16,390	12,320	338,760	363,950
1964	1,070	80	8,070	16,680	401,710	714,080
1965	2,110	---	18,610	6,230	606,820	1,340,720
1966	22,260	11,960	53,770	19,070	1,926,890	1,356,130
1967	8,660	210	69,290	24,980	1,760,950	1,542,550
1968	24,490	10	18,660	20,020	1,003,440	2,992,090
1969	168,130	---	86,840	13,230	1,259,030	5,318,770
1970	2,630	1,960	257,240	48,240	1,417,560	2,547,210
1971	158,200	3,820	117,580	29,780	603,120	1,366,750
1972	234,180	20	86,020	44,880	2,829,310	2,072,830
1973	183,680	140	211,960	94,870	1,604,790	1,694,210
1974	93,530	7,980	75,430	127,280	2,610,950	2,619,590
1975	373,080	1,640	272,920	171,450	3,254,930	3,175,270

*See Note Table I

TABLE 2 CONTINUED

	<u>MAN*</u>	<u>SASK</u>	<u>ALTA</u>	<u>BC</u>	<u>FED</u>	<u>TOT</u>
1960	72,580	5,320	27,160	33,960	24,460	738,700
1961	1,370	4,420	19,390	35,230	49,780	1,335,080
1962	49,920	2,920	21,300	35,860	242,930	1,417,900
1963	3,980	9,070	23,520	83,820	56,250	917,140
1964	50,290	5,590	6,300	321,186	55,500	1,580,550
1965	12,660	19,850	6,170	92,290	244,410	2,349,870
1966	39,700	20,930	46,780	240,230	1,440,450	5,178,170
1967	14,940	10,690	17,920	350,730	173,840	3,974,760
1968	13,900	36,140	58,662	486,400	478,960	5,082,732
1969	11,180	34,010	64,000	323,730	472,960	7,751,880
1970	54,230	56,450	37,160	1,775,280	341,600	6,539,560
1971	82,760	1,910	83,020	267,620	152,030	2,866,590
1972	53,990	72,240	25,870	2,003,800	330,390	7,753,530
1973	122,160	33,200	181,430	620,160	1,029,480	5,776,080
1974	143,940	322,870	203,850	2,608,460	336,010	9,149,890
1975	161,070	174,900	374,940	1,790,350	1,158,260	10,635,890

*See Note Table I

TABLE 3

Annual Man-Days Lost/Strike by Province*

	<u>NFLD**</u>	<u>PEI</u>	<u>NS</u>	<u>NB</u>	<u>QUE</u>	<u>ONT</u>
1960	1,070	---	1,474	280	5,454	2,163
1961	362	---	3,929	5,430	9,975	3,884
1962	930	---	780	2,637	1,141	2,678
1963	943	590	1,093	2,464	4,641	2,011
1964	1,070	80	621	3,336	6,180	3,798
1965	528	---	931	779	6,190	5,003
1966	2,226	3,987	1,582	908	14,065	4,566
1967	962	210	1,925	2,271	12,314	5,766
1968	2,721	10	583	1,540	7,839	10,217
1969	21,016	---	1,477	778	8,229	22,348
1970	329	1,960	4,083	2,838	11,251	11,848
1971	5,455	764	3,563	1,752	4,501	6,766
1972	4,504	20	3,441	1,320	19,117	11,205
1973	6,560	70	6,624	4,518	8,064	8,305
1974	1,263	2,660	1,372	2,892	6,695	7,705
1975	8,883	547	4,199	5,531	8,967	8,845

* Table 2 divided by Table 1.

Note further these numbers are rounded to the nearest whole day.

** See Note Table 1.

TABLE 3 CONTINUED

	<u>MAN</u>	<u>SASK</u>	<u>ALTA</u>	<u>BC</u>	<u>FED</u>	<u>T AVE***</u>
1960	6,048	760	5,522	2,264	1,439	2,696
1961	343	737	2,174	2,202	4,148	4,652
1962	4,292	973	2,367	1,237	26,992	4,599
1963	1,327	2,268	3,360	4,657	3,516	2,763
1964	5,029	559	3,150	11,471	2,775	4,608
1965	1,022	2,836	686	1,810	10,184	4,690
1966	3,308	1,744	3,119	6,160	38,931	8,393
1967	1,868	972	1,991	8,157	7,558	7,615
1968	2,317	2,008	5,866	8,533	22,680	8,733
1969	1,863	1,701	4,267	4,625	23,648	13,028
1970	9,038	4,704	3,716	27,739	17,080	12,066
1971	8,276	318	4,370	3,186	5,068	5,038
1972	4,908	4,013	2,874	24,738	10,658	12,966
1973	6,787	2,554	7,257	4,734	20,186	7,978
1974	6,258	7,508	4,633	18,499	5,508	7,512
1975	4,881	4,067	11,027	12,433	21,449	9,083

*** T AVE - Total Average

TABLE 4

Incremental Strike Mathematical Sign Changes by Province

	<u>NFLD</u>	<u>PEI</u>	<u>NS</u>	<u>NB</u>	<u>QUE</u>	<u>ONT</u>	<u>MAN</u>	<u>SASK</u>	<u>ALTA</u>	<u>BC</u>	<u>FED</u>	<u>TOT</u>
1960-61	-	0	0	+	+	+	-	-	+	+	-	+
1961-62	-	0	+	-	+	+	+	-	+	+	-	+
1962-63	+	+	-	+	+	+	-	+	-	-	+	+
1963-64	-	0	-	0	-	+	+	+	-	+	+	+
1964-65	+	-	+	+	+	+	+	-	+	+	+	+
1965-66	+	+	+	+	+	+	0	+	+	-	+	+
1966-67	-	-	+	-	+	-	-	-	-	+	-	-
1967-68	0	0	-	+	-	+	-	+	+	+	-	+
1968-69	-	-	+	+	+	-	0	+	+	+	-	+
1969-70	0	+	+	0	-	-	0	-	-	-	0	-
1970-71	+	+	-	0	+	-	+	-	+	+	+	+
1971-72	+	-	-	+	+	-	+	+	-	-	+	+
1972-73	-	+	+	-	+	+	+	+	+	+	+	+
1973-74	+	+	+	+	+	+	+	+	+	+	+	+
1974-75	-	0	+	-	-	+	+	0	-	+	-	-

TABLE 5

Incremental Man-Days Lost Mathematical Sign Changes by Province

	<u>NFLD</u>	<u>PEI</u>	<u>NS</u>	<u>NB</u>	<u>QUE</u>	<u>ONT</u>	<u>MAN</u>	<u>SASK</u>	<u>ALTA</u>	<u>BC</u>	<u>FED</u>	<u>TOT</u>
1960-61	-	0	+	+	+	+	-	-	-	+	+	+
1961-62	+	0	-	-	-	-	+	-	+	+	+	+
1962-63	+	+	+	+	+	-	-	+	+	+	-	-
1963-64	-	-	-	+	+	+	+	-	-	+	-	+
1964-65	+	-	+	-	+	+	-	+	-	-	+	+
1965-66	+	+	+	+	+	+	+	+	+	-	+	+
1966-67	-	-	+	+	-	+	-	-	-	+	-	-
1967-68	+	-	-	-	-	+	-	+	+	+	+	+
1968-69	+	-	+	-	+	+	-	-	+	-	-	+
1969-70	-	+	+	+	+	-	+	+	-	+	-	-
1970-71	+	+	-	-	-	-	+	-	+	-	-	-
1971-72	+	-	-	+	+	+	-	+	-	+	+	+
1972-73	-	+	+	+	-	-	+	-	+	-	+	-
1973-74	-	+	-	+	+	+	+	+	+	+	-	+
1974-75	+	-	+	+	+	+	+	-	+	-	+	+

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